

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF TEXAS  
3 HOUSTON DIVISION

4 PRESTON WOOD & ASSOCIATES, LLC, )  
5 )  
6 Plaintiff, ) NO. H-16-CV-1427  
7 )  
8 v. ) August 24, 2018  
9 )  
10 CAMERON ARCHITECTS, INC., )  
11 )  
12 STEPHEN CAMERON, UL, INC., d/b/a )  
13 )  
14 URBAN LIVING, and VINOD RAMANI )  
15 )  
16 Defendants. )

17 TRIAL  
18 BEFORE THE HONORABLE DAVID HITTNER  
19 AND A JURY

20 VOLUME 3  
21 PAGES 3-1 to 3-211

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Labarthe - Direct by Mr. Zummo

1 (Jury present)

2 THE COURT: Be seated, please.

3 Go right ahead, please.

4 MR. ZUMMO: May we have the screen down and the  
10:11 5 lights down again, Your Honor?

6 THE COURT: Do you use your computer? We'll get  
7 your computer on.

8 DIRECT EXAMINATION CONTINUED

9 By Mr. Zummo:

10:12 10 Q. Good morning, Miss Labarthe.

11 A. Good morning.

12 Q. We were about to start talking about the third floor  
13 comparison between the Preston Wood D5-214 and the Cameron  
14 Nagle claims when we broke yesterday.

10:12 15 Are you ready to go with your observations on  
16 the third floors?

17 A. Yes, I am.

18 Q. Did you find any creative decisions in the creation by  
19 Preston Wood of the third floor for the D5-214 plan?

10:12 20 A. Well, the arrangement of spaces within the third floor  
21 planner have -- Yes. I believe, yes, they did, have  
22 creative arrangement.

23 Q. And did you find any of those creative -- any evidence  
24 of those creative decisions copied in the Cameron Nagle  
10:13 25 third floor plan?

Labarthe - Direct by Mr. Zummo

1 A. Yes.

2 Q. Can you tell us what you found when you compared the two  
3 plans.

4 A. Okay. On the left here is the --

10:13 5 THE COURT: Can we make it a little larger, if you  
6 have that ability?

7 Hang on.

8 THE WITNESS: Do you want it zoomed out?

9 THE COURT: Yeah.

10:13 10 THE WITNESS: Yeah.

11 THE COURT: Zoom out a little bit more. Okay.

12 A. So, on the left-hand side is the Preston Wood plan.

13 And, again, it has the curved wall overlooking the backyard  
14 in this case that was similar to what was below in the  
10:13 15 second floor living area.

16 The stairs that we talked about yesterday,  
17 here they are coming up to the third floor. As they arrive  
18 at the third floor, there's a step here and another step  
19 here.

10:14 20 And what he was doing is setting a different  
21 ceiling height so that -- I think Preston Wood may have  
22 explained this to you when he went through the same plan --  
23 so that this area on the floor below, which is the kitchen,  
24 has a slightly lower ceiling height.

10:14 25 So, just by virtue of how this stair was

*Labarthe - Direct by Mr. Zummo*

1 designed, it enabled the ceiling below it to be higher than  
2 is typical. So, I think it was maybe 12 feet instead of --  
3 It was maybe 11 or 12 feet instead of 10 feet.

4 So, other than that, the -- which I think is,  
10:15 5 you know, a pretty interesting decision and move. So, he  
6 has to have this corner that goes back to get to the master  
7 suite. The laundry is tucked here into the closet off of  
8 the hallway.

9 And then entering the master suite is a pair  
10:15 10 of doors and then a longer vanity along one wall and a  
11 shorter vanity along this wall. I think he was referring to  
12 that as "his and hers", but I don't know. That seems like  
13 that might be his. I don't know.

14 And then over here on this side it has a  
10:15 15 walk-in shower and a tub that's mounted in a -- what we call  
16 a deck. And then in -- and then a toilet compartment.

17 Then, here, there are a pair of doors leading  
18 into a large walk-in closet. I won't speculate as to which  
19 side is his and hers.

10:15 20 So, there -- within this volume of space for a  
21 closet and a master bath, there are many, many different  
22 possible configurations of these separate desired  
23 components.

24 So, I thought this was, you know, pretty  
10:16 25 interesting. I think lots of times people don't want to

*Labarthe - Direct by Mr. Zummo*

1 share their vanities because one person may be a neater  
2 person than the other. So, I always think -- I see a lot of  
3 clients wanting that, and that's a nice way to do it.

4 Then there's another pair of doors that enters  
10:16 5 into here. So, this arrangement within the master bath  
6 suite I think is -- could have been done many different  
7 ways, and this was a interesting, creative way to do it.

8 The other thing is here he angled the door --  
9 the wall where the door into the toilet compartment is to  
10:16 10 help give a bigger sense of open space within the bathroom.

11 Now, if you look at the mirror image, which is  
12 what we called yesterday the "mirror flip" of this plan, you  
13 can see that, although the master suite has now moved in  
14 this configuration to the front over the garage doors,  
10:17 15 whereas here it was in the back overlooking the backyard,  
16 the components of the master bath remain quite similar down  
17 to even having a pair of small doors versus a single door or  
18 a pocket door or, you know, many different decisions on how  
19 to go from one space into the next.

10:17 20 You still have the long vanity, the separate  
21 shorter vanity, the walk-in shower and tub, although they  
22 are flipped in this condition.

23 The shower was close to the short vanity in  
24 this plan. The tub is closer to the short vanity. But,  
10:17 25 nevertheless, they occupy the same basic space within the

Labarthe - Direct by Mr. Zummo

1 overall.

2 Also, there is this angled wall again  
3 similar -- the same as this over here and then the closet.

4 So, there are modifications that --

10:18 5 THE COURT: Ma'am, you can move the mic out -- back  
6 a little bit. You seem a little bit loud.

7 THE WITNESS: Thank you.

8 THE COURT: No. You're carrying just fine.

9 THE WITNESS: Okay. So, I would say the major  
10:18 10 thing that has changed between this plan and this plan is  
11 the stair.

12 So, because the stair was positioned where it  
13 was and it's coming up from down below, in both cases, it  
14 started back in the back and is coming this way toward the  
10:18 15 front of the house as you move from second to third floor.

16 In this case, because they have -- Cameron  
17 Architects put the master bedroom in the front, and he's got  
18 to get to the -- access to the bedroom.

19 What happened was -- The solution he's come up  
10:19 20 with to get back there is that he needed more steps. So,  
21 quite a lot of -- So, this is what we call "split stairs".

22 So, it comes up from the -- starts about down  
23 here on the second floor, comes up to this landing, but that  
24 isn't high enough to just have a flat corridor to get back  
10:19 25 here. He has to add more steps here and then here.

Labarthe - Direct by Mr. Zummo

1                   So, if you're in the master suite, this is how  
2   it would work. You come out your door, go down to the  
3   landing and then come back up to get to the rest of the --  
4   till you get to that bedroom in the back. So, it's sort of,  
10:19 5   I would say, a split landing here and then a split stair.

6                   So, that was the main difference, and it was  
7   really precipitated by taking the exact position of the  
8   stair in the Preston Wood plan. And instead of designing it  
9   maybe differently, maybe there could have been a more  
10:20 10   efficient way to do it than putting in all these steps.

11                  You know, taking that as a given from the  
12   Preston Wood plan, this is sort of the solution that they  
13   came up with, which seems a bit awkward and takes a lot of  
14   extra steps. I think there could have been a simpler  
10:20 15   solution, but, you know, this is what this resulted in.

16   Q. I'd like to ask you a question, and it will include  
17   asking you to make an assumption about a legal term.

18                  I'd like you to assume with me that the Court  
19   will instruct the jury in this case that the definition of  
10:20 20   an "architectural work" is the design of a building, which  
21   is the arrangement and composition of spaces and elements.

22                  Can you make that assumption for me?

23   A. Yes. Yes, I can.

24   Q. Are the Preston Wood plans that you have studied and the  
10:21 25   other plans that you heard Mr. Wood talk about yesterday --



*Labarthe - Direct by Mr. Zummo*

1 from your understanding of those plans, are each of those  
2 Preston Wood plans that we've discussed in this case  
3 architectural works under that definition?

4 A. Yes, they are.

10:21 5 Q. As an "architectural work" being a combination or  
6 arrangement of spaces and elements, if the designer of a  
7 home changes one of the decisions the designer made about  
8 some aspect of the home, does that sometimes require changes  
9 in other parts of the home?

10:21 10 A. Well, yes.

11 Q. Can you give us an example.

12 A. Well, if one were to -- Let's say you have the client in  
13 and they want to -- Let's say they start with something like  
14 this and they say, 'Well, but I want the bedroom to be  
10:22 15 3 feet bigger. I want a bigger bedroom.'

16 Well, now you have less space to -- especially  
17 within a townhouse where you're restricted by the  
18 boundaries, you have property lines. You can't just push a  
19 wall out to enlarge it, you know.

10:22 20 So, it becomes a kind of domino effect. When  
21 one thing changes, it requires other changes to go along --  
22 to follow along.

23 Q. Is what you called the "extra-step solution" in the  
24 Cameron Nagle third floor plan one example of that domino  
10:22 25 effect?

*Labarthe - Direct by Mr. Zummo*

1 A. Yes. I think it was. It was a result of shifting the  
2 master -- flipping the master from back to front and needing  
3 access both ways.

4 But without changing the position of the  
10:23 5 stair, this was the effect that -- There may have been other  
6 solutions. This was the solution that was arrived at for  
7 that.

8 Q. In addition to comparing elevations, comparing floor  
9 plans, did you also compare the details that are included in  
10:23 10 these two sets of drawings?

11 A. Oh. Yes, I did.

12 Q. Can you tell the jury what we are looking at here,  
13 the -- what these details are and where they are in the  
14 exhibit.

10:23 15 A. Okay. These are -- Just as you looked at on the --  
16 yesterday where we talked about the front elevation -- so,  
17 that's a flat two-dimensional rendering of what you're  
18 looking at. These are flat two-dimensional drawings of  
19 cabinets. So, they're vertical. They're drawings of what  
10:24 20 occurs in the vertical plane.

21 So, it's called "millwork" and that means, in  
22 this case, cabinetry, built-ins. So, these are built-ins  
23 that are within the kitchen in the Preston Wood example, and  
24 this is a built-in from the living room side, some  
10:24 25 bathrooms, master bath, so forth.

*Labarthe - Direct by Mr. Zummo*

1                   The art niche. Here we go. So, when I looked  
2                   at the Cameron millwork elevations, I found that, even  
3                   though his kitchen had redistributed the components, such as  
4                   the oven and the refrigerator and the sink and different  
10:24 5                   things, that he had not altered the Preston Wood millwork  
6                   drawings. He just copied them identically even though, in  
7                   this case, they bear no resemblance to the layout of the  
8                   kitchen that he had modified.

9                   Q. What does that -- or do you draw any conclusion from  
10:25 10                  that?

11                  A. Well, that he didn't -- he left it up to builder, but  
12                  that he -- this was a copy -- a direct copy of the Preston  
13                  Wood project.

14                  Q. And he copied elements that he actually wasn't going to  
10:25 15                  be using in his version of the design?

16                  A. They weren't usable. I mean, they were not reflective  
17                  of the -- These drawings are an exact copy of the Preston  
18                  Wood drawing. They are not reflective of what occurs in the  
19                  plan of the Cameron changes.

10:25 20                  Q. And yesterday I asked you about whether the font on the  
21                  Preston Wood design on the page we were looking at was  
22                  similar to the font of the Cameron design that we were  
23                  looking at and you said, on that page, they looked different  
24                  to you.

10:26 25                               After we left the court yesterday, did you

*Labarthe - Direct by Mr. Zummo*

1 review the plans again to compare the fonts?

2 A. I did.

3 Q. What did you find?

4 A. Because my general impression in looking at these two  
10:26 5 projects was that the fonts also were similar and that  
6 jumped out at me. And, so, as I said yesterday, sometimes  
7 when you change computer programs or whatever, you know, the  
8 fonts will automatically change. Maybe this font may not  
9 have been loaded in the computer -- in Cameron's computer.

10:26 10 But when I looked back at the two sets side by  
11 side, out of seven sheets of drawings, five out of those  
12 seven sheets were identical fonts. And, so, this is the  
13 font.

14 And I think Mr. Wood mentioned that he had a  
10:26 15 staff member at one time that loved to, you know, pick  
16 different fonts and stuff. This is a font that you don't  
17 see a lot, but we see it a lot in architectural drawings  
18 because it is a sort of -- This is how we were taught to  
19 print when we did all our drawings by hand.

10:27 20 So, it's a kind of a computer rendering of an  
21 architect's block-lettering style. And, so, it's very  
22 distinctive. You don't see it a lot except maybe in some  
23 architectural drawings.

24 So, that was the identical font that I noticed  
10:27 25 in almost all the drawings, but not all.

Labarthe - Direct by Mr. Zummo

1 Q. And do we see it, for example, on the cabinet details?

2 A. Yes. This is the same. This is an identical font.

3 Q. Did you also compare a Preston Wood plan that was called  
4 the 1171 to a Cameron plan that was called Mount Vernon?

10:27 5 A. Yes, I did.

6 Q. What did you find when you compared those two plans?

7 A. In these two projects, I found that they were nearly  
8 identical. They were -- It took me a while, but I did  
9 notice two very, very small changes within the Cameron plan.

10:28 10 I can point those out. They're very minor.

11 Q. So, if we were to go like we did on the earlier  
12 comparison floor by floor, elevation by elevation -- Do you  
13 think we even need to do that?

14 A. No.

10:28 15 Q. Why do you think we don't need to do that?

16 A. Because they are substantially the same design.

17 Q. What were the two differences that you did find?

18 A. On the Cameron -- Let's see. On the Cameron second  
19 floor plan -- Do we have that up?

10:29 20 This is the Preston Wood plan. If you look at  
21 this area -- this wall area in the living room and -- Over  
22 here, in the Cameron plan, he's added a balcony projecting  
23 off the wall, which leads me to believe that they had a  
24 wider lot.

10:29 25 Maybe it was a corner lot or something; so,

*Labarthe - Direct by Mr. Zummo*

1 they wanted to do something more to embellish that facade  
2 and they had the space to do it. They weren't limited by  
3 the prescription of this exact width of lot.

4 So, this is a flat wall on the Preston Wood  
10:30 5 drawing, and here we find this minor variation, which is a  
6 projecting balcony.

7 Basically, it's the same depth and width as  
8 the projecting balcony on the front elevation, which is  
9 here. That occurred in both. And this was really a  
10:30 10 reiteration of that in its width and depth and detail.

11 Q. Is that something that could have been done by taking  
12 CAD and making a copy of the Preston Wood balcony and then  
13 adding the second balcony?

14 A. Yes. Easily.

10:30 15 Q. And then what was the second change that you found?

16 A. The second minor change that I found was on the third  
17 floor. So, on this side, we have the Preston Wood third  
18 floor plan and, again, this wall.

19 So, it's the same wall that the balcony below  
10:31 20 projected out about here and -- Rather, on this -- on the  
21 Cameron design, the balcony below projected out here.  
22 Basically, it's the same design.

23 Over here in the walk-in closet off of the  
24 master suite, there is a small projection that's 6 feet wide  
10:31 25 and 1 foot off the main wall, which here it was a flat wall.

Labarthe - Direct by Mr. Zummo

1 MR. ZUMMO: Ms. Cooper, can you blow that up, the  
2 Cameron plan.

3 A. So, this is the projection. So, it is 1 foot by 6 feet.  
4 So, it added 6 square feet of what we call air-condition  
10:31 5 square footage and -- to the project.

6 Interestingly, though, I went back to see if  
7 that was accounted for in what we call the "gross area  
8 summary" of the building, which is generally in a little  
9 table. I think it may be here on this plan. And that  
10:32 10 additional 6 feet of square footage wasn't accounted for.

11 In other words, the square footage summary on  
12 the Cameron plan is identical to the Preston Wood square  
13 footage summary even though 6 square feet were added. And,  
14 likewise, approximately 30 or 31 square feet of balcony was  
10:32 15 not added to the area.

16 Q. Thank you, Ms. Labarthe.

17 MR. ZUMMO: We pass the witness.

18 THE COURT: Okay.

19 MR. STROTHER: Your Honor, may I proceed?

10:32 20 THE COURT: Sure. Go right ahead.

21 MR. STROTHER: Your Honor, at some point, I'm going  
22 to use my computer for the screen. Could we switch over?

23 THE COURT: Okay.

24 MR. STROTHER: Thank you.

10:32 25 THE COURT: Does that got you?

*Labarthe - Cross by Mr. Strother*

1 MR. STROTHER: It will when I go back over there.

2 Yes. Well, here. Let's try.

3 (Off-the-record discussion)

4 CROSS-EXAMINATION

10:33 5 By Mr. Strother:

6 Q. Good morning, Miss Labarthe.

7 A. Good morning.

8 Q. I think that my questions to you are going to be fairly  
9 limited. I wouldn't be surprised if they were 10 or

10:33 10 15 minutes, maybe less.

11 It's kind of a silly question, but I want to  
12 make sure the jury understands.

13 You are getting paid for your opinion  
14 testimony. True?

10:33 15 A. Yes, I am.

16 Q. That's not a surprise. You understand that people like  
17 you, experts, do get paid in cases to provide opinions?

18 A. True.

19 Q. You won't be shocked to learn that we're paying our  
10:33 20 witness as well.

21 A. Right.

22 Q. I just didn't want to give them the impression that we  
23 were the only ones paying our witness.

24 Were you retained to offer an opinion about  
10:34 25 whether the plans were copied?



*Labarthe - Cross by Mr. Strother*

1 A. Yes.

2 Q. Okay. I'm asking because I want to make sure that we're  
3 kind of on the same page when I ask the rest of my  
4 questions.

10:34 5 When you were in the courtroom yesterday, did  
6 you learn that the Defendants don't deny that Cameron  
7 Architects started with D5-214 for the Nagle Street plan?

8 A. I heard that.

9 Q. And did you hear Mr. Cameron say that, without a doubt,  
10:34 10 he essentially duplicated the Preston Wood & Associates plan  
11 for the Mount Vernon address?

12 A. Okay. Yes.

13 Q. Right?

14 A. Yes.

10:34 15 Q. With regard to D5-214, did you ever look into whether  
16 there were any problems with the stair design?

17 A. I noticed that there was an indication on a section that  
18 the headroom looked like the dimension had been taken from a  
19 point that was not exactly where it should have been.

10:35 20 Q. Did you perform any analysis of what the ramifications  
21 would be on how the plan would need to be altered to make  
22 that appropriate headroom?

23 A. I did look at it briefly. I did not try to redesign it.

24 Q. That's okay.

10:35 25 A. Yeah.

*Labarthe - Cross by Mr. Strother*

1 Q. I just want to make sure I know what you were asked to  
2 do and what you've done.

3 A. Right. I wasn't asked to do that, but I found it in --

4 Q. Okay.

10:35 5 A. Yeah.

6 Q. Thank you.

7 Have you been to any of the built properties,  
8 any of the built townhomes, based upon the first set of  
9 Nagle plans?

10:35 10 A. I have not.

11 Q. Have you looked at any photos to find out if things like  
12 the radius stairs were built that way?

13 A. I have not.

14 Q. And by "radius stairs" what I'm referring to is the  
10:35 15 landing on the -- I guess the garage floor, where you were  
16 pointing about the curve at the end.

17 A. Right.

18 Q. I'm sorry.

19 You said you haven't seen any photos to --

10:36 20 A. I have not.

21 Q. I do want to show you the drawings again. I'm not going  
22 to go into a lot of detail about what might be similar and  
23 what might not be similar, but there were a couple of things  
24 we talked about that caught my attention.

10:36 25 Do you recognize these to be the two second

*Labarthe - Cross by Mr. Strother*

1 floor drawings, one on the right from Preston Wood &  
2 Associates and the one on the left from Cameron Architects?

3 A. Yes. I believe those are the two, yes.

4 Q. One of the things I wanted to ask you about -- I've got  
10:37 5 a pointer that I'm going to use -- I'm going to try to use.

6 One of the things I wanted to ask you about  
7 was this curved wall in the living room, the curved exterior  
8 wall.

9 I recall your testimony being that that was  
10:37 10 a -- I don't remember your adjective -- a special feature of  
11 the PWA design.

12 A. I don't remember my adjective either.

13 Q. If you would like, you can use whatever adjective you  
14 want.

10:37 15 You pointed it out as being something that  
16 caught your eye, I guess.

17 A. It was a major feature within the elevations, I think,  
18 and, also, the plan, yes.

19 Q. So, what's your opinion about the removal of that  
10:38 20 feature in the Cameron Architects plan? It doesn't appear  
21 on the top or bottom of this drawing.

22 A. Well, I wondered about that. So, I -- Well, there were  
23 a couple of things.

24 Number one is it's less expensive not to build  
10:38 25 that cantilevered wall. The second thing is, since -- So, I

*Labarthe - Cross by Mr. Strother*

1 went to look at the site plans because I figured there must  
2 have been some reason why, in the very first place, the  
3 Cameron plan flipped the major living spaces from the front  
4 to the back -- I mean, the back to the front.

10:38 5 And, so, in doing that, I noticed that there  
6 was a difference in the site plans for where the two project  
7 townhouse designs were to be located.

8 And in the Cameron -- I mean, in the Preston  
9 Wood site plan, there was a potential view in the direction  
10:39 10 where the curved wall occurred.

11 In the other plan, there was no potential view  
12 unless you want to look directly into the living room of  
13 the -- of another property about 7 feet, 3 inches, away or  
14 so.

10:39 15 So, I mean, marketing-wise, that makes a lot  
16 of sense. As an architect, I would have said, 'Yeah. We  
17 don't want to be looking into someone else's backyard.  
18 Let's do a different plan.'

19 So, to me, that was one of the major reasons  
10:39 20 why there was no -- Well, there were two. I think it was a  
21 cost factor. Simple. Find the plan. Makes it easier to  
22 build, less expensive. And there was no reason to have a  
23 big curved feature looking at another building so close  
24 to....

10:40 25 Q. Okay. So, at least two external factors, I guess:

*Labarthe - Cross by Mr. Strother*

1 market demand and cost.

2 Would you say market demand would be or would  
3 you characterize that as something different?

4 A. The view potential?

10:40 5 Q. You mentioned marketing.

6 A. Well, you know, I'm not a marketing expert, but I think,  
7 as an architect, I would always hope to take care of -- take  
8 advantage of a view. So, something site-specific, then....

9 Q. Or site specificity I guess you could say.

10:40 10 Site specificity and cost of construction  
11 could have led to the change?

12 A. Well, those are my inferences.

13 Q. Okay.

14 A. I mean, I don't have a detailed history of why those  
10:40 15 changes were made.

16 Q. But you heard Mr. Wood testify that site specificity --  
17 the view of downtown Houston is why he added this feature to  
18 that particular plan.

19 A. He talked about that in regard to several plans, and I  
10:41 20 can't recall whether it was this one specifically. I think  
21 so, but....

22 Q. Fair enough.

23 My guess is you're not going to agree with  
24 what I'm about to ask you to agree to, but let me try.

10:41 25 Wouldn't you say moving all of these rooms

*Labarthe - Cross by Mr. Strother*

1 around altered the character of the plan?

2 A. Well, of course, it altered it, but I don't think -- I  
3 think that there are certain features that make something  
4 really stand out and noticeable.

10:41 5 And some of those features include things like  
6 the stair, and that didn't change, at least on the main  
7 living room level.

8 The curved wall at the bottom of the stair,  
9 the way the stair spills out and so forth, I think that  
10:41 10 creates a fairly significant style -- stylistic move.

11 Q. Let me flip the PWA plan so that we're looking at the  
12 stair in the exact same place as the Cameron Architect plan.

13 The Cameron Architect plan over here, when you  
14 put the stairwell in the same place, has a different size  
10:42 15 living room that the stairwell does not pour out into, as it  
16 does over here. Correct?

17 A. That's right.

18 Q. Isn't that a pretty significant change?

19 A. Well, there are degrees of significance. So, I don't  
10:42 20 know. I don't know how to answer that.

21 Q. What about having a balcony off of the living room as  
22 opposed to not having a balcony off of the living room?

23 A. Well, again, I think -- I don't really understand the --  
24 I mean, I think the degrees of significance are probably  
10:43 25 what you're asking for, and I don't know how to measure

*Labarthe - Cross by Mr. Strother*

1 degrees of significance. I think there are still, you know,  
2 substantial similarities between the two. So....

3 Q. I think your testimony yesterday was that the stairs  
4 into the breakfast room was a very different concept.

10:43 5 A. I don't think I said it's a different concept.

6 Q. Maybe you didn't say "concept".

7 A. No.

8 Q. Do you remember what you said?

9 A. No. But I didn't say "concept", I don't think.

10:43 10 Q. I think you said you didn't think it was as good of a  
11 design to have the stairs going into the breakfast....

12 A. I have, you know, seen that before. It's a less formal,  
13 perhaps, move, yeah.

14 Q. I understand that you're not a marketing expert, but do  
10:44 15 you think that an ultimate homebuyer would view these two  
16 plans as different, given the different shape of the living  
17 room and the balcony coming off the living room, the stairs  
18 going into the breakfast rather than the living room?

19 A. Well, I can only speak for myself.

10:44 20 Q. Okay.

21 A. So, I would prefer, I believe, not having such a  
22 formal-looking stair emptying into a breakfast room. But  
23 that's -- You know, that's trying to be me as a homebuyer,  
24 not any other -- I don't know the market, really.

10:44 25 Q. Understood. I'm wrapping up with you.

*Labarthe - Cross by Mr. Strother*

1 Do you remember that, when you gave your  
2 opinions in the form of a report in this case, you listed  
3 the things you reviewed to reach those opinions?

4 A. Yes.

10:45 5 Q. One of the things you mentioned reading was Copyright  
6 Office Circular 41.

7 Do you base your opinion, in part, on your  
8 review of that document or did you just review it  
9 incidentally?

10:45 10 A. I'd have to refresh my memory on that.

11 Q. May I show you your report.

12 A. No. No. Not my report. The Circular 41, what it  
13 specifically says.

14 Q. Okay. As you sit here today, you don't remember if you  
10:45 15 based your opinion on it one way or the other?

16 A. Well, I'm familiar with it, but my opinions were my  
17 opinions based on looking at the plans --

18 Q. Okay. That's okay.

19 A. -- the plans and elevations.

10:45 20 Q. Thank you.

21 MR. STROTHER: I have no further questions, Your  
22 Honor.

23 THE COURT: Okay.

24 MR. ZUMMO: We have no redirect, Your Honor.

10:45 25 THE COURT: Thank you, ma'am. You may step down.



1 You're excused. You're free to leave.

2 Call your next witness.

3 MR. BONHAM: Your Honor, we have some short  
4 discovery responses that we wish to read into the record and  
10:46 5 then that will be all for our case.

6 THE COURT: Okay. Go right ahead.

7 MR. BONHAM: I'll just read them in.

8 THE COURT: All right.

9 MR. BONHAM: And I've let Mr. Strother know these  
10:46 10 are coming.

11 This is the interrogatory to Urban Living,  
12 Interrogatory No. 13 and the answer. And this is from  
13 Preston Wood & Associates' interrogatories to Urban Living  
14 and their second amended answer.

10:46 15 "Interrogatory No. 13: Identify" -- Can you  
16 switch over to the machine.

17 THE COURT: Okay.

18 MR. BONHAM: We've got it up on the screen so that  
19 they're not just....

10:46 20 THE COURT: Yeah.

21 MR. BONHAM: And, if I could, Your Honor, could you  
22 explain to the jury what an "interrogatory" is.

23 THE COURT: Right.

24 As the case proceeds, one side can send  
10:46 25 questions to the other -- written questions to the other,

1 known as "interrogatories". Then the other side has to  
2 respond.

3 So, that's what we're looking at here. Now,  
4 these interrogatories, what, were sent by the Plaintiff to  
10:47 5 the defense, asking them questions relevant to the case.  
6 And that's what we have.

7 MR. BONHAM: Thank you, Your Honor.

8 THE COURT: That's what we're looking at.

9 MR. BONHAM: I've got it up on the screen, but I'll  
10:47 10 read it in for the record.

11 Interrogatory No. 13: "Identify each and  
12 every distribution of any plan, drawing, sketch or other  
13 two-dimensional representation (excluding photographs of  
14 constructed buildings) of any infringing house or infringing  
10:47 15 plan, including all floor plan and elevation drawings used  
16 in advertising and marketing any infringing house.

17 "Include in your answer when such drawing,  
18 sketch or other two-dimensional representation was created,  
19 who created it, and the dates and manners of each of its  
10:47 20 distributions.

21 "This interrogatory is intended to include  
22 each iteration of each web page that included floor plans of  
23 any house in any infringing project and, for each iteration,  
24 the data regarding the dates and the number of page views of  
10:48 25 it."

1                   The answer: "Advertising materials for Nagle  
2     Park Place were created and distributed along with floor  
3     plans on www.har.com and www.urbanliving.com on or around  
4     August of 2015.

10:48 5                   "The advertising materials were created by  
6     Andy Raynor or Tamisha Ross, who are part of the media team  
7     in Urban Living.

8                   "Cameron Architects, Inc., created the plans  
9     which were ultimately used to create the marketing plans.  
10:48 10     The media team and sales consultants were in charge of the  
11     creation or maintenance of the web pages. The marketing  
12     materials are created and maintained by the media team on  
13     the web pages.

14                   "The sales consultants notify the media team  
10:48 15     when updates are necessary. The page views for the  
16     www.urbanliving.com web page averages 685 per month."

17                   Next I'm going to read some responses to  
18     requests for admission. And, again, if I could ask the  
19     Court to explain what those are.

10:49 20                  THE COURT: In other words, again, early on in a  
21     case you can make a statement, 'Do you deny or admit the  
22     following?' And that's basically what we're going to do.  
23     Correct? These are inquiries. 'Do you admit or deny?'

24                   MR. BONHAM: These are from Urban Living's second  
10:49 25     amended responses to Preston Wood's requests for admission.

1 "Request for Admission No. 10(e): Admit that  
2 for the project identified as 0 Nagle Street in  
3 Paragraph 134 of your first amended answer and counterclaim  
4 there were marketing materials that included floor plans or  
10:49 5 elevations of a unit in the project that were distributed or  
6 otherwise made available to the public.

7 "Response: Admit.

8 "Request for Admission No. 10(f): Admit that  
9 for the project identified as 0 Nagle Street in  
10:50 10 Paragraph 134 of your first amended answer and counterclaim  
11 there were marketing materials that included floor plans or  
12 elevations of a unit in the project that were distributed or  
13 otherwise made available to the public and did not include  
14 the copyright management information described in  
10:50 15 Paragraph 4 of the PWA-UL agreement.

16 "Response: Admit.

17 "Request for Admission No. 10(g): Admit that,  
18 for the project identified as 0 Nagle Street in  
19 Paragraph 134 of your first amended answer and counterclaim,  
10:50 20 there were marketing materials that included floor plans or  
21 elevations of a unit in the project that were distributed or  
22 otherwise made available to the public after January 17,  
23 2015.

24 "Response: Admit."

10:51 25 Thank you, Your Honor.

1 MR. ZUMMO: With those responses, Your Honor, the  
2 Plaintiff rests.

3 THE COURT: Plaintiff rests, completes its case.

4 All right. Defense, are you ready to proceed?

10:51 5 MR. STROTHER: Your Honor, I do have a brief motion  
6 I'd like to address.

7 THE COURT: Okay. In any case, civil or criminal,  
8 when the person who's got the burden of proof completes  
9 their case, we take a short break so I can hear some motions  
10:51 10 by the other side. So, we're going to do that.

11 I assume it'll take -- Well, I know it's early  
12 for a break. Give us about ten minutes and then we'll get  
13 back in. Okay? We'll see you in ten minutes.

14 (Jury not present)

10:52 15 THE COURT: Be seated.

16 Defense, what's your position?

17 MR. STROTHER: Yes, Your Honor.

18 We move for directed verdict on one very  
19 precise, specific point. Under 504(b) of the Copyright Act,  
10:52 20 it is true that Plaintiffs have the burden to put on  
21 evidence of revenues and then the burden is supposed to  
22 shift to Defendants to put on the evidence of expenses that  
23 should later be deducted.

24 However, the case law makes it very clear that  
10:52 25 "revenues" doesn't just mean revenues. A case out of the

1 Second Circuit, *Davis v. The Gap*, 246 F.3d 152, says that  
2 "revenue" in the statute means, quote, "gross revenue  
3 reasonably related to the infringement".

4 THE COURT: Who has to show that? You're saying  
10:52 5 the Plaintiff has to?

6 MR. STROTHER: The Plaintiff has that burden. So,  
7 they don't have to just put on evidence of revenue. They've  
8 got to put on gross revenue reasonably related to the  
9 infringement and not unrelated revenues. They've put on  
10:53 10 evidence only of revenues, and they've not done a better  
11 connection.

12 There's another case that I think is directly  
13 on point, and this is *University of Colorado v. American*  
14 *Cyanamid*. I've highlighted it.

10:53 15 This case, which was denied cert. by the  
16 United States Supreme Court --

17 THE COURT: Well, Randy Rader, that's just a  
18 federal circuit, isn't it?

19 MR. STROTHER: It is. Yes.

10:53 20 THE COURT: Judge Rader.

21 MR. STROTHER: Part of this case under the federal  
22 circuit was patents. This involved a prenatal vitamin, but  
23 the part that I want to call the Court's attention to is the  
24 copyright aspect.

10:53 25 THE COURT: Hang on. Where is that?

1 MR. STROTHER: Page 7 of 8, Your Honor.

2 THE COURT: I see. You got it tagged.

3 MR. STROTHER: Let me give you a brief rundown of  
4 the facts of the case.

10:53 5 Some physicians had created a vitamin and --

6 THE COURT: They created a vitamin?

7 MR. STROTHER: The physicians. The University of  
8 Colorado physicians.

9 Later on, American Cyanamid reformulated that  
10:54 10 vitamin and marketed it, sold it, and they also included  
11 some writings that went along with the vitamin. And that's  
12 where the copyright aspect comes into it.

13 The Plaintiffs put on evidence only of  
14 American Cyanamid's gross revenue from sales of that  
10:54 15 vitamin. That's it. But they didn't make any connection.

16 The federal circuit said the University's  
17 argument presumes -- Let me back up.

18 Unhighlighted portion. The University argues  
19 that its proof of Cyanamid's gross revenues from sales of  
10:54 20 reformulated Materna -- that's the vitamin -- shifted the  
21 burden of proof to Cyanamid under 504(b) to prove deductible  
22 expenses and to prove those elements of its profits that  
23 were attributable to factors other than copyright  
24 infringement.

10:54 25 That's where we would be, and that's the

1 argument I've been making, Your Honor, about the 250-dollar  
2 amount in context with what else Urban Living's commission  
3 was being received for, stuff like land, stuff like the  
4 actual construction materials.

10:55 5 The highlighted portion gives the Court's  
6 answer. The University's argument presumes that the  
7 sales --

8 THE COURT: Slow down a bit. Start again. I'm  
9 following. The court reporter needs to get it down.

10:55 10 MR. STROTHER: Yes, Your Honor.

11 The University's argument presumes that the  
12 sales of reformulated Materna were due to Cyanamid's  
13 copyright infringement. The University had the burden to  
14 show this connection. They quote to *Nimmer on Copyright*.

10:55 15 THE COURT: Is that Nimmer out of the U of H?

16 MR. STROTHER: I don't know, Your Honor.

17 THE COURT: Okay. Because he --

18 MR. STROTHER: Nimmer and Nimmer.

19 MR. ZUMMO: Different one, Your Honor.

10:55 20 THE COURT: Different one?

21 MR. ZUMMO: Yes.

22 MR. STROTHER: And the trial court found that the  
23 University did not meet that burden, and the appellate court  
24 detected no clear error in the finding.

10:55 25 That's where we are right now, Your Honor. I



1 even attempted to help my opposing counsel with different  
2 motivation by asking both Mr. and Mrs. Wood to go into  
3 detail about whether they were asserting 100 percent of the  
4 gross revenues or not.

10:55 5 THE COURT: Gross revenues of who?

6 MR. STROTHER: Urban Living.

7 THE COURT: Your client?

8 MR. STROTHER: Yes.

9 THE COURT: Gross revenues from what? Everything,  
10:56 10 all their business, or for just this particular -- on these  
11 particular plans?

12 MR. STROTHER: Just these particular townhomes that  
13 are at issue.

14 THE COURT: Go on.

10:56 15 MR. STROTHER: And that was met with several  
16 objections. The only answer I was able to get was Miss Wood  
17 saying they were just seeking what the law would allow.

18 So, after the Plaintiff has rested, we still  
19 don't have the connection. Plaintiffs have not put forth  
10:56 20 any evidence about -- or made any claim about what portion  
21 of the profits after deductible expenses that they're  
22 seeking, and they're required to do so before the burden  
23 shifts.

24 THE COURT: All right. Response.

10:56 25 MR. ZUMMO: Response, Your Honor, this is an

1 argument that we see very often and it's usually a very  
2 good-faith misunderstanding of the profits that are  
3 involved.

4 Copyright law distinguishes between direct and  
10:56 5 indirect profits. And in the *Davis v. The Gap* case --

6 THE COURT: I'm not looking at you. I'm looking  
7 down. I'm just listening. So, don't take it personally.  
8 I'm not looking at you.

9 Go on.

10:57 10 MR. ZUMMO: The *Davis* case involved indirect  
11 profits. Indirect profits are profits --

12 THE COURT: Okay. Now, that's not the one I'm  
13 looking at.

14 MR. ZUMMO: Okay.

10:57 15 THE COURT: The *Davis* case is what?

16 MR. ZUMMO: It's the first one Mr. Strother  
17 referred to.

18 THE COURT: Oh.

19 MR. ZUMMO: The one that he handed the Court is  
10:57 20 another example of indirect profits because the copied  
21 material was put in a patent application. It was not a case  
22 that the federal circuit -- *University of Colorado* case did  
23 not involve profits from the direct sale or rental or  
24 transfer of the infringing articles themselves, the  
10:57 25 infringing items.

1 In the Fifth Circuit and the -- Probably one  
2 of the clearest opinions, very thorough opinion on this, is  
3 by Judge Ellison, and it was the *Interplan Architects*  
4 opinion. It's about 100 pages long.

10:58 5 But he addressed this argument and explained  
6 that, in the case law, when the profits come from the sale  
7 of the thing that's infringing, that's a direct profit and  
8 the causal connection is automatically established for  
9 504(b) .

10:58 10 If you instead use -- And there's a case I  
11 think the Court -- The Court may remember a lawyer, Dana  
12 LeJune, who tried a case in the Eastern District of Texas,  
13 the *Fair*, which is a store, v. Vane. That's one of the lead  
14 Fifth Circuit cases on indirect profits.

10:58 15 In that case the infringing material was used  
16 in advertising and the Plaintiff tried to claim that all of  
17 the revenues for the period of time that that advertising  
18 ran were gross revenues.

19 But because it's not -- the infringing ads  
10:59 20 were not themselves sold, the Court required evidence of a  
21 causal connection before you could address those profits.

22 In other words, if it's just in the --

23 THE COURT: Okay. Remind me of the proof that you  
24 say is sufficient that you brought up and that's in the  
10:59 25 record right now.

1 MR. ZUMMO: Right now, it is undisputed that the  
2 gross revenues we are seeking come from two sources. One is  
3 commissions on the sales of the townhomes that were based on  
4 what we claim to be infringing plans.

10:59 5 THE COURT: How many?

6 MR. ZUMMO: We had that stipulation, Your Honor.  
7 But for the Nagle Street, it's six townhomes, and our  
8 stipulated admitted facts totaled the commissions for all of  
9 the townhomes from four other -- from three other projects.

10:59 10 So, that's in our stipulated facts. Those  
11 commissions come from the actual sale of an infringing --  
12 what we allege to be an infringing house. So, those are  
13 direct profits.

14 THE COURT: Okay. Now, is that all you've got?  
11:00 15 And is that sufficient?

16 MR. ZUMMO: It's all we need, and it's sufficient,  
17 Your Honor.

18 THE COURT: Why do you say that?

19 MR. ZUMMO: Because the revenues have a causal  
11:00 20 connection by law because they come from the sale of the  
21 infringing --

22 THE COURT: Is that sufficient without going into  
23 further specificity of a breakdown as looking at this case,  
24 which I've not seen before?

11:00 25 MR. ZUMMO: It is sufficient, Your Honor. We

1 require no further breakdown or proof.

2 THE COURT: All right. Then what? Does any burden  
3 shift at this point?

4 MR. ZUMMO: The dual burden kicks in and they now  
11:00 5 have to --

6 THE COURT: "The dual burden" meaning that you've  
7 shown sufficient, as you see it, under the law --

8 Why don't you take that note.

9 MR. ZUMMO: I don't even need a note, Your Honor.

11:00 10 THE COURT: What?

11 MR. ZUMMO: I don't need the note.

12 THE COURT: What does it say? You're out of time  
13 or something?

14 MR. ZUMMO: Cameron.

11:00 15 THE COURT: All right. Go on.

16 MR. ZUMMO: But, yes, the -- we've satisfied our  
17 burden. It's now the burden of the Defendant.

18 THE COURT: To show what?

19 MR. ZUMMO: Any deductible expenses or any elements  
11:01 20 of profit attributable to factors other than the copyrighted  
21 work.

22 THE COURT: Response now, please.

23 MR. STROTHER: Your Honor, I disagree with counsel.  
24 This case, the *Gap* case and *Nimmer* state that there's got to  
11:01 25 be a connection shown by the Plaintiff, and it doesn't

1 distinguish between direct or indirect expenses.

2 This case doesn't involve my client or either  
3 client building the home. It's the sale of the home. And  
4 just throwing up revenues that a salesperson makes off the  
11:01 5 sale of an infringing home is not good enough to shift the  
6 burden.

7 THE COURT: All right. The motion is overruled at  
8 this time, to be reconsidered at the charge conference.  
9 Okay? And I'm going to leave it right there.

11:01 10 All right. Are you ready to proceed, counsel?

11 MR. STROTHER: I am, Your Honor.

12 May I have the computer shifted over?

13 THE COURT: Yeah. I'll tell you what. It's now  
14 11:02. It's early for a break. So, we can start and go  
11:02 15 right through for about another hour and a half, let's --

16 Ellen, tell the jury we'll be back in at --  
17 what is it? -- that we have just taken a break, that we'll  
18 be back in ready to resume at 11:15.

19 Okay? That's about 12 minutes. We'll see you  
11:02 20 then.

21 MR. ZUMMO: Thank you, Your Honor.

22 (Brief recess)

23 (Jury present)

24 THE COURT: All right. We're ready to resume and  
11:21 25 to move on.

*Bachman - Direct by Mr. Strother'*

1 Defense, call your first witness.

2 MR. STROTHER: Your Honor, defense calls Professor  
3 Leonard Bachman to the stand.

4 **LEONARD BACHMAN, CALLED BY THE DEFENDANT, SWORN**

11:22 5 DIRECT EXAMINATION

6 By Mr. Strother:

7 Q. Mr. Bachman, good morning. How are you?

8 A. I'm fine. Thank you.

9 Q. Sorry. I had a little computer glitch here for a  
11:22 10 second. Got me freaked out.

11 Would you please introduce yourself to the  
12 jury.

13 A. I'm Leonard Bachman. I've been a professor of  
14 architecture at the University of Houston since I started  
11:23 15 teaching in 1978. I got my 30-year pin on my birthday two  
16 days ago. So....

17 THE COURT: Were you at U of H for the full time?

18 THE WITNESS: Yes, sir. I began there as a student  
19 in 1973. In the interim, I've been a practicing and  
11:23 20 consulting architect.

21 This is one of those professions where you  
22 don't just teach. You must have currency in the profession  
23 and be out there doing things.

24 I've also worked with organizations at the  
11:23 25 national level. I was the president of the Society of

*Bachman - Direct by Mr. Strother'*

1 Building Science Educators. I've been on the board of the  
2 Architectural Research Center's consortium for, I think,  
3 going on 12 years.

4 I've worked with the American Institute of  
11:23 5 Architects on their national programs, including being a  
6 technical coordinator for a national awards program that  
7 includes residential projects and commercial.

8 I've published now -- My fifth book will be  
9 coming out later this year. I've done 30 or 40 papers at  
11:24 10 conferences and journals.

11 Q. And are all those books and journals referenced here in  
12 your CV, which is Defendants' Exhibit 17, I believe?

13 A. Yes. I believe they are.

14 Q. I'm sorry. Defendants' Exhibit 19.

11:24 15 Okay. This was printed out in January of  
16 2017. Do you, offhand, know if there's anything new that  
17 needs to be added?

18 A. No. It shouldn't be anything pertinent.

19 Q. You mentioned that you began school at the University of  
11:24 20 Houston in 1973.

21 Did that culminate with this bachelor of  
22 architecture in 1979?

23 A. It did. I studied math for two years first at  
24 San Antonio Junior College.

11:24 25 Q. Okay.



*Bachman - Direct by Mr. Strother'*

1 A. I did my undergraduate degree in '79. I finished my  
2 master's in '81.

3 Q. And I believe Miss Labarthe, who has previously  
4 testified, also had a master's of architecture.

11:25 5 Can you explain what that degree is.

6 A. It's the first professional degree in architecture. So,  
7 there is a five-year professional undergraduate degree that  
8 allows you to get a license.

9 So, you can do your internship, take your  
11:25 10 professional registration exam and become a practicing  
11 licensed architect or you can do a four-year undergraduate  
12 degree and then do a master's degree.

13 In my case, I did a five-year professional  
14 degree, but then I, wanting to teach, needed a master's  
11:25 15 degree, which is the terminal degree, we call it, in  
16 architecture. So, I went on to do my master's as well.

17 THE COURT: How many years is the master's degree?

18 THE WITNESS: If you have a five-year professional  
19 degree, Your Honor, it's one year additional.

11:25 20 THE COURT: Okay.

21 By Mr. Strother:

22 Q. Professor Bachman, you mentioned that you were the past  
23 president of the Society of Building Science Educators.

24 What is that organization?

11:26 25 A. This is a collection of people -- Basically, it's a

*Bachman - Direct by Mr. Strother'*

1 support organization for people who teach technology and  
2 architecture.

3 The membership is national and widely endorsed  
4 and active. We have very informal backwoods retreats kind  
11:26 5 of things where you leave your telephone at home and we just  
6 talk for a few days.

7 Q. Has your teaching focused on any specific area in  
8 architecture?

9 A. Well, if you wanted to classify me, I'm more on the  
11:26 10 technical side of architecture. My central focus and  
11 responsibility at the college is teaching environmental  
12 systems, which is heating, cooling, lighting, acoustics,  
13 electrical, plumbing code, life safety, the things that make  
14 buildings work.

11:26 15 But I also teach research methods, and I have  
16 a specialty in an area I created called "building systems  
17 integration", which is the bridge between the technology  
18 side and the design side.

19 Q. Okay. Do you also have hands-on residential experience?

11:27 20 A. Yes.

21 Q. Tell me how far that goes back.

22 A. Well, when I was an undergraduate, I worked with my  
23 mentor, George Wray, and we did houses across Texas. George  
24 was an early solar pioneer that came to UH from University  
11:27 25 of Arizona. And I later worked with George in the firm of

*Bachman - Direct by Mr. Strother'*

1 Tackett Lodholz.

2 But, in 1978, by then, I was on my own.

3 George had left the university and left the firm. And I  
4 fell in with an organization here in Houston that was trying  
11:27 5 to mass-produce flood-plain-safe kind of homes. And we did  
6 one in The Woodlands for which I won a national award, one  
7 of many awards.

8 It was a program of the Housing and Urban  
9 Development and Department of Energy, and they published a  
11:28 10 book of the winners. I was just one of them. But, in 1978,  
11 as an undergraduate, I was pretty proud of that.

12 Later, settling in Houston Heights, my wife  
13 and I bought a 1913 home, and we remodeled it by our own  
14 hands and then began to do, as an investment business, the  
11:28 15 buying and remodeling and leasing of historic homes in the  
16 Heights. We did a few of those.

17 I've worked with builders, architects on  
18 projects, large and small, as a consultant, oft times as an  
19 energy consultant.

11:28 20 I've done residential designs for remodels in  
21 the Heights. I'm doing one now for a family in Memorial.  
22 I've just finished two years designing my own house, but  
23 that probably doesn't count.

24 Q. In the 2000s were you invited to a committee of the  
11:29 25 American Institute of Architects?

*Bachman - Direct by Mr. Strother'*

1 A. The Committee on the Environment gives an award called  
2 The Top Ten. I was not on the awards jury. I've been  
3 invited, I think, eight years in a row to be on the  
4 technical review committee that looks at the submissions --  
11:29 5 about 60 of them -- before they go to the actual jury.

6 So, we vetted those for technical details. We  
7 try to help the jury identify the links between the benefits  
8 of the energy gadgets and the architectural features that  
9 they lead to in the designs.

11:29 10 Q. Thank you.

11 How long have you lived in Houston?

12 A. I came here in 1973 to begin my undergraduate work at  
13 the University of Houston.

14 Q. Are you professionally familiar with the design of  
11:30 15 townhomes within the loop in Houston?

16 A. I've seen many. I've been involved in a few.

17 Q. So, I asked Miss Labarthe the same question.

18 You're being paid by Defendants for your  
19 opinions in this case?

11:30 20 A. Yes, I am.

21 Q. And have you been retained to offer opinions in this  
22 case?

23 A. Yes, I have.

24 Q. Can you tell me what you were asked to render opinions  
11:30 25 on.

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1 A. Similarities and differences between different sets of  
2 designs.

3 Q. Were you also asked to look at Preston Wood &  
4 Associates' designs and identify any standard elements?

11:30 5 A. Yes, I was.

6 Q. Now, before we get into those specific opinions, I want  
7 you to educate me and the jury on a couple of things.

8 Do architects look at a residence and say that  
9 this residence has a certain style?

11:31 10 A. Oft times.

11 Q. So, I'm going to use layperson vocabulary. If there is  
12 vocabulary that you think is more appropriate when talking  
13 about architecture, please let me know.

14 So, as a style, I think what I heard Mr. Wood  
11:31 15 mention earlier was "Mediterranean". And I don't remember  
16 which plan he was referring to, but I remember hearing that  
17 word. I think I heard Miss Labarthe say something like  
18 "Greek" about a different plan as well.

19 Are those styles of residential architecture?

11:31 20 A. Not so much in Houston. What we basically see in  
21 Houston is a kind of decorative historic imprint onto the  
22 elevations.

23 Some of the ones we are looking at here might  
24 be called "Tuscan", if you can use the "Mediterranean" term  
11:31 25 for it. But they're basically quasi-historical

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1 decoration --

2 Q. Okay.

3 A. -- that doesn't follow through into the architecture  
4 itself or into the interior planning.

11:32 5 Q. Tell me a little more what you mean by -- Did you say  
6 "historical decoration"?

7 A. Well, the whole -- the epochs of the architecture we've  
8 gone through in residences, if you will, especially in  
9 mass-produced speculative housing, has kind of ended up with  
11:32 10 the plain box decorated with stylistic things --

11 Q. Okay.

12 A. -- in a kind of eclectic, not-always-very-successful  
13 way.

14 Q. Within a particular style, are there things that people  
11:32 15 would generally expect to see within that style?

16 A. For it to appear harmonious, you would think that the  
17 eclecticism was somehow a little careful, that you wouldn't  
18 mix Greek with New England styles or something that was  
19 egregious.

11:33 20 Q. Okay. Let's look at some of the plans together, please.  
21 I'm going to bring you a laser pointer.

22 And I have all of the plans that we're talking  
23 about on paper. If at some point you would like to look at  
24 them in a binder, let me know. I think that looking at them  
11:33 25 digitally is going to suit your purposes, but it's up to

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1 you, Professor.

2 I want you to look at Defendants' Exhibit 26.

3 Let me ask you first: Among the things you

4 reviewed to render your opinions in this case, did you

11:33 5 review a plan created by Preston Wood & Associates?

6 A. Yes, I did.

7 Q. Are you familiar with the name Nagle or Nagle Park  
8 Place?

9 A. Yes, I am.

11:34 10 Q. And do you understand that the Plaintiffs in this case  
11 are claiming that a plan used to construct some units at  
12 Nagle Park Place infringed on Preston Wood & Associates'  
13 plan?

14 A. Yes. I understand that.

11:34 15 Q. For the record, you understand that the Defendants do  
16 not deny using Preston Wood & Associates' plan as a starting  
17 point for the Nagle plan used to create six of these six  
18 units?

19 A. That's my understanding. Yes.

11:34 20 Q. Okay. I'll represent to you that this first page is an  
21 elevation on the front of the Preston Wood plan at issue for  
22 Nagle.

23 Did you look at this plan?

24 A. Yes, I did.

11:34 25 Q. Is it okay to look at this first page even though it's

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1 not full of the technical periphra [phonetic]?

2 A. Yes. It's fine for me.

3 Q. Does this drawing have a style to you?

4 A. If I had to name it, I would -- this is the one I was  
11:35 5 going to call "Tuscan". Yes.

6 Q. So, what elements of a Tuscan style in Houston would you  
7 expect to see as part of that style?

8 A. The elements here that are suggestive of Tuscan are the  
9 pedimented friezes at the corners, this frieze here, the  
11:35 10 circular treatment there. There are some things that are  
11 kind of discordant, like the small eyebrow roof.

12 The heavy cornices over the windows are fairly  
13 Tuscan. You might have to have an arch to span things if  
14 this was really masonry construction.

11:35 15 Q. So, those elements that you just went over -- those are  
16 elements that you would expect to see if someone was  
17 describing the front elevation of a three-story or  
18 four-story Tuscan townhome?

19 A. Well, the palm tree seems to be added for effect.

11:36 20 Q. Okay. So, what I want to do, Professor, is go through  
21 the floor plan with you, and I'd like you to call our  
22 attention to the elements that you believe are standard or  
23 generic.

24 So, I'm going to zoom in on the first floor,  
11:36 25 if that's okay with you.



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1 A. Please.

2 Q. I'm going to zoom in significantly; so, we won't be able  
3 to see the entire plan. Just tell me when you'd like me to  
4 scroll down -- or, better yet, why don't we start where we  
11:36 5 can see the whole plan --

6 A. Yes, please.

7 Q. -- and then we can zoom in if we need to.

8 What catches your eye as something that's  
9 standard or generic here?

11:36 10 A. Can I speak to the entire overall opinion or --

11 Q. Yes, please.

12 A. I'd rather to do that than start with particular  
13 details.

14 Q. Please.

11:37 15 A. So, my opinion, which I was asked for and which I  
16 rendered carefully, is that we could take this plan and we  
17 could take all of the other plans that you can get in any  
18 Sunday newspaper home section and put them side by side and  
19 this one would not in any way be distinctive.

11:37 20 This is a stock plan of a generic arrangement  
21 of rooms comprised entirely of standardized, generic  
22 components.

23 The garage is a requirement and essential  
24 function addressed to the street.

11:37 25 The entry from there to the interior, a public

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1 entry, because there's no place else to put it on the front  
2 because of the width of the building.

3 The presence of the main spaces being upstairs  
4 as the footprint is prohibitive of having general living  
11:37 5 spaces downstairs. So, a kind of guest room, library,  
6 study, almost ancillary, but very, very useful kind of space  
7 with some address to the outside. Downstairs.

8 Now if I could see the second floor.

9 Q. Yes.

11:38 10 A. So, out of necessity of the floor plate, the primary  
11 public living area gets pushed to the second floor and, true  
12 to most modern residential speculative housing, it's as open  
13 a grand room as construction will allow.

14 Kitchen, living, dining in the necessary sort  
11:38 15 of arrangement with a toilet for public --

16 Q. What do you mean by the "necessary sort of arrangement"  
17 when you said kitchen, living, dining?

18 A. Well, how would you flip them? If you put the kitchen  
19 in the middle, you'd have to go through the kitchen to get  
11:38 20 to the dining room or to the living room.

21 And you'd have the kitchen, which would be at  
22 the stairway, which would be illegal because you cannot exit  
23 through a kitchen.

24 So, the kitchen has to be at one end or the  
11:39 25 other, and the dining room probably has to adjoin it. That

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1 leaves either a living/dining/kitchen or kitchen/dining/  
2 living. Take your pick.

3 Q. So, in your opinion, there are really only two ways to  
4 organize those three rooms in the second story of a three-  
11:39 5 or four-story townhome?

6 A. Within these narrow constraints, yes.

7 Q. Continue.

8 A. The third floor, please.

9 So, again, the separation of semi-private to a  
11:39 10 little less private in the master suite, having its own end  
11 of the design, and the other bedroom being at the opposite  
12 end of the design separated by the other functions that you  
13 have to have, the bath and the closet storage areas.

14 But there is nothing here that you wouldn't  
11:40 15 find in any other typical townhouse design in terms of the  
16 elements, and there's nothing that you'll find here in terms  
17 of the arrangements that are in any way innovative or  
18 distinctive.

19 There's nothing here to make this different  
11:40 20 from other designs because there's no single idea here that  
21 is there to be given expression. It's generic. It's stock.  
22 It's conventional. It's standardized. And I don't think  
23 anyone has said any different.

24 Q. What kind of idea would be possible on the third floor  
11:40 25 of a townhome where you've got a master suite and a second

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1 bedroom? I lost myself in that sentence, and I forgot what  
2 you said.

3 An idea that has a nonstandard expression, I  
4 guess, might have been what you said.

11:41 5 A. That would be the true designer's -- That would be real  
6 architecture. That is the stock and trade, to do something  
7 that is distinctive, that is based on an idea.

8 And to invent one here in front of you would  
9 be magic. I wish I could do that. I could take you back  
11:41 10 historically. Frank Lloyd Wright -- If we go back to the  
11 second floor, please.

12 Q. Yes.

13 A. Frank Lloyd Wright, most famous of all architects, was  
14 working with prairie-style homes for rich and wealthy people  
11:41 15 who could afford large horizontal plans of single level and  
16 very elaborate detailing and woodwork for a very long time.  
17 But after World War II, everybody's client base dried up and  
18 there was not much else to do.

19 Frank Lloyd Wright, working with a very  
11:41 20 elegant, concise and simple idea about floor plans, said,  
21 'Let's eliminate everything. No basement. No garages. No  
22 attics. No pantries. No separate kitchens. No servant  
23 quarters. No radiators.'

24 And he invented several things that made the  
11:42 25 open flow of space what we see even today in residential

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1 planning. Even in the most speculative of plans, we learned  
2 from Frank Lloyd Wright that, if you make all of this one  
3 room, you don't have to have three small rooms.

4 And if you open this up to the view, then you  
11:42 5 capture that space as well. The typical suburban ranch  
6 house has the great room, the patio doors, and the backyard  
7 and the barbecue. Right?

8 That comes from Frank Lloyd Wright's idea,  
9 which he called "Usonian", because he was trying to find an  
11:42 10 authentic style for people of the United States of America  
11 from which he derived Usonia as a kind of style.

12 And he built 60 of these very attractive,  
13 still very well known. Many of these houses are on the  
14 National Heritage List. But that would be an idea that  
11:43 15 would make it distinctive.

16 And if you show me a Frank Lloyd Wright  
17 Usonian house in all of its elegant simplicity and you show  
18 me another house, I can tell you which one is Frank Lloyd  
19 Wright.

11:43 20 Q. And would you refer to this second floor as an open  
21 arrangement?

22 A. Sure. It is a clean, convenient response because  
23 there's nothing to add. Right? We're trying to unclutter  
24 it, which also eliminates expense.

11:43 25 It gives us more space or a sense of more

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1 space because we don't have separations between rooms. We  
2 have a bigger volume. It gives us a sense of having, you  
3 know, that big, open space here.

4 Q. I've heard you use the word "arbitrary" in the past when  
11:44 5 discussing architecture.

6 Is there anything arbitrary about this design?

7 A. The fact that this could have been done other ways; and  
8 there's no clear reason that it was done this way other than  
9 simplicity and economy, convenience, convention,  
11:44 10 standardization. Right?

11 So, the selection of this particular  
12 arrangement is equal to any other such arbitrary  
13 arrangement. Otherwise, you could have done it, yes.  
14 There's a limited number of ways you could have done it well  
11:44 15 and correctly and satisfactorily, but that's merely  
16 convention.

17 The fact that this was arrived at was just  
18 somebody's idea of a workable arrangement of elements and  
19 spaces. There is no idea here that's being given  
11:45 20 expression. These are standard components and standard  
21 arrangements. It's generic and, to that extent, it's  
22 arbitrary -- an arbitrary choice among other choices.

23 Again, you go to the Sunday newspaper, pick  
24 out any number of plans, try and see how one of them differs  
11:45 25 in significant ways from the other. There are little clever

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1 things here and there perhaps, but there isn't one idea that  
2 gives it an expression that makes it a distinctive design.  
3 And that is the separation between things that are  
4 authentically well designed, even perhaps achieving  
11:45 5 architecture.

6 I don't mean to say that we should build  
7 everything in the world to be a magnificent piece of  
8 architecture.

9 We don't put the Eiffel Tower next to the  
11:45 10 Taj Mahal, next to, you know, Monticello, next -- We don't  
11 line all these things up and say every building has to be  
12 that great. They don't.

13 Most good architecture is background  
14 architecture. There's nothing wrong with that. But to say  
11:46 15 that this was a solid piece of thinking, designing and  
16 planning is a stretch.

17 Q. So, let me ask you a question from the other side of  
18 this analysis.

19 I know that you were not asked to identify  
11:46 20 elements that were duplicated. But you would admit that,  
21 when you compare the Cameron Architect plan that was used to  
22 construct the six Nagle townhomes, that there were some  
23 elements that were duplicated?

24 A. Yes. It's clear that there was kind of a beginning and  
11:46 25 starting point and that things had to be reconfigured.

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1 Q. Did you look at the two plans together to pick out what  
2 you thought were some of the significant differences?

3 A. I did. I'd have to have -- Well, let's -- If I had them  
4 side by side or if I had my notes, I could elaborate, but by  
11:47 5 memory, no.

6 Q. Let me see if I can put them side by side. Let's  
7 start -- Is there a floor you'd like to start with?

8 A. Second floor, please.

9 Q. Okay. Take me one moment.

11:47 10 The first one I'm going to put up on the  
11 screen is the Preston Wood second floor. And there is the  
12 Cameron Architects second floor.

13 Will this do the trick?

14 A. Yes. Thank you.

11:48 15 Q. Okay.

16 A. So, these are correct to the orientation of the site.  
17 These are oriented correctly as they're intended to be on  
18 the site?

19 Q. I believe so. Yes.

11:48 20 A. Okay. So, in the Cameron design, we have a view.

21 Q. I'm sorry. The one on the left is the Preston Wood.

22 A. Preston Wood. We have an intentional view this  
23 direction, which you see is not here, the view of the other  
24 direction from the main public living space.

11:48 25 The kitchen is put to entirely one side. So,



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1 the breakfast room can have its own corner nook rather than  
2 being in this position with the kitchen where you have to go  
3 through the kitchen to get actually to this area. Right?

4 The balconies then are still at this bottom  
11:49 5 end of the building, let me call it. So, the relation of  
6 the balcony to the living space here might be thought of as  
7 being better.

8 The stair now is flipped. There were some  
9 difficulties with the stairs. Shall I address that?

11:49 10 Q. If you'd like to now, yes.

11 A. In looking at these drawings, there was a very specific  
12 code violation in the original plans where the headroom for  
13 the stair so you don't bump your head as you go up was  
14 measured not from the top of the stair riser but from the  
11:49 15 bottom, which is a seven-and-a-half-inch mistake.

16 And that necessitated, when it got  
17 reconfigured, a series of design changes that I think  
18 resulted in largely the total reconfiguration of this plan.  
19 Because the stair didn't work, the stair had to be reworked  
11:50 20 and, in that reworking, everything else got moved around.

21 That is some indication of how tight you're  
22 working within this limited floor plate. So, once that  
23 change happened, then the things you see that are different  
24 flow from a whole different logic. Right?

11:50 25 Now we have living, balcony to this side,

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1 kitchen, breakfast here, whereas here we have kitchen,  
2 breakfast, balcony, amalgamated and a "great space", if you  
3 want to call it that, here -- right? -- with a view to the  
4 other direction.

11:51 5 Q. Okay. Would you like to continue with the second floor  
6 side by side or move to a different floor?

7 A. Let's do third floor, please.

8 Q. That sounds like a game show.

9 A. For 20.

11:51 10 Q. The one on the left will be the Cameron Architects plan,  
11 and the one on the right will be the Preston Wood plan.

12 A. So, since the changes --

13 Q. I said it incorrectly. I dragged it over.

14 The one on the right is the Cameron Architects  
11:51 15 plan. The one on the left is the Preston Wood & Associates  
16 plan.

17 A. Okay. Thank you.

18 We can see the bay bow extended. So, here  
19 again, in this plan the idea is to capture this major space  
11:51 20 and major view for the master suite. Right?

21 In this plan, that is simply not the case.  
22 This continues, really, what got started on the second floor  
23 below with the separation of spaces. So, now we have  
24 bedroom there and master suite to the front.

11:52 25 The disposition of the dressing areas, which

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1 we really don't know how that would be used or conceived,  
2 here isn't that different in its practical use and  
3 application, but the configurations are certainly all  
4 different because the plan ended up getting flipped.

11:52 5 Q. Okay. Do you want to look at the ground floor?

6 A. Let's do that.

7 Q. Okay. First, here is the Preston Wood plan. Coming up  
8 will be the Cameron Architects plan.

9 A. So, here's the result of being constrained by things  
11:53 10 such as the prescribed floor plate and the garage entry,  
11 which takes up obviously half of the plan.

12 Q. What do you mean by "prescribed floor plate"?

13 A. Okay. So, there are site boundaries and there are  
14 setbacks, and that leaves you with a buildable envelope.

11:53 15 Right? So, you get a space you can work in and that's about  
16 it.

17 Q. Okay.

18 A. Because garages -- I think here we're 24 feet. I can't  
19 tell. Garages vary from 19 feet to 22 to 24 feet sometimes.

11:54 20 But these are probably kept down to about the minimum. I  
21 can't read the dimension here.

22 And then, again, that necessitates a public  
23 entry from the side, which are configured slightly  
24 differently.

11:54 25 Here we have entry into a room but then

*Bachman - Direct by Mr. Strother'*

1 leading up to the stair to the public space.

2 Here we have a foyer, which is different --  
3 right? -- leading to a stair that had to be slightly  
4 different than what the designer started with because of the  
11:54 5 headroom issue.

6 But the room back here is separate and  
7 discreet, whereas this one is semi-combined with the  
8 entryway.

9 So, those are different.

11:54 10 Q. So, looking at these three floors together and comparing  
11 the two plans, do you believe that they are substantially  
12 similar?

13 MR. ZUMMO: Objection, Your Honor. The witness has  
14 not been given any assumption of the legal meaning of that  
11:55 15 term.

16 THE COURT: All right. Rephrase it.

17 MR. STROTHER: Fair enough.

18 By Mr. Strother:

19 Q. I'm going to give you the -- I'm going to ask you to  
11:55 20 make an assumption about the legal meaning of the phrase  
21 "substantially similar".

22 Assume that "substantial similarity" means the  
23 copying of the constituent elements of the Preston Wood &  
24 Associates work that are original.

11:55 25 With that definition, do you believe that the

*Bachman - Direct by Mr. Strother'*

1 two works are substantially similar?

2 A. Well, definitions within definitions. This is not a  
3 "yes" or "no" kind of answer. I want to be as helpful as I  
4 can, but to explain what I mean.

11:56 5 Yes, there are degrees of similarity. What is  
6 substantial? There is some copying, I think, evident. But  
7 if I saw these two sets of drawings independently, I think  
8 they would blend in with ten other such sets of drawings  
9 that were prepared independently without knowledge of these  
11:56 10 plans, and it might be difficult to say which was a copy of  
11 what. So, substantially, I can't really opine to that.

12 Q. Let me ask you about the Mount Vernon plan.

13 I will put them up there on the screen, if  
14 you'd like, but my questions are probably much more concise  
11:57 15 about Mount Vernon.

16 Did you compare Mount Vernon plans that I will  
17 call "initial Mount Vernon plans" with subsequent Mount  
18 Vernon plans to find out if you believe that they were  
19 duplicates?

11:57 20 A. I did. Are we referring to the Bill Wooten plans?

21 Q. Yes.

22 A. Yes.

23 Q. You know, I think it would be useful to at least put  
24 them up on the screen. Give me a moment. You know, I made  
11:57 25 a mistake, my client pointed out.

*Bachman - Direct by Mr. Strother'*

1                   The Bill Wooten plans are the subsequent Nagle  
2     Park Place plans.

3     A.   Okay.   Now, just for clarity, please put up what we're  
4     talking about.

11:57 5     Q.   Yeah.   Why don't I show you the Bill Wooten plans that  
6     you asked about so we can put them in context for the jury.  
7     This is still in Exhibit 26.

8                   So, factually, do you have an understanding of  
9     what the Bill Wooten plans are?

11:58 10                  THE COURT:   What exhibit is that?

11                  MR. STROTHER:   This is still Exhibit 26, Your  
12     Honor, Defendants'.

13                  THE COURT:   Now, what is it that we're looking at?

14                  MR. STROTHER:   I'll ask Professor Bachman if he  
11:58 15     knows.

16                  THE COURT:   All right.

17     By Mr. Strother:

18     Q.   Can you identify for the Judge what the Bill Wooten  
19     plans are, to your understanding.

11:58 20     A.   They were a new set of plans done from scratch when it  
21     was discovered that some mistake or disputed...then had come  
22     up over the initial plans and the developed plans.

23     Q.   So, when I was talking about the Cameron Architects  
24     plans used for six units, are the Wooten plans what were  
11:59 25     used to build the remaining ten units?

*Bachman - Direct by Mr. Strother'*

1 A. As I understand it, yes.

2 Q. Okay. I don't have any questions for you about it, but  
3 I just wanted to identify for the jury that there is a set  
4 of something that are referred to as "the Wooten plans".

11:59 5 Do you believe that the Wooten plans are  
6 substantially similar to any of the other plans?

7 A. I do not.

8 Q. So, it's Mount Vernon.

9 Did you compare the Mount Vernon plans that  
11:59 10 were alleged to have -- Strike that.

11 Do you understand that the Defendants agree  
12 that the initial Mount Vernon plans were virtual duplicates  
13 of the Preston Wood & Associates' plans?

14 A. Yes, I do.

12:00 15 Q. Did you compare that set of plans with a third set of  
16 plans prepared by Cameron Architects that were actually used  
17 and permitted?

18 A. Yes, I did.

19 Q. What's your opinion about the similarity between those  
12:00 20 plans?

21 A. May I see them side by side, please?

22 Q. Yes. That will take me a moment.

23 A. I'm sorry. There's a lot of plans here. I don't want  
24 to get sideways or confused or confusing.

12:00 25 Q. Professor, we may have to go old-school in this way.

*Bachman - Direct by Mr. Strother'*

1 I'm going to use my binder.

2 A. Okay.

3 MR. STROTHER: Your Honor, can we switch over to  
4 the overhead camera?

12:00 5 THE COURT: Okay. Is the unit on?

6 MR. STROTHER: Yes, Your Honor.

7 THE COURT: Okay.

8 By Mr. Strother:

9 Q. So, the first thing I will show you is the front  
10 elevations side by side. This is the Preston Wood plan.  
11 And then this would be the Cameron Architects plan that was  
12 ultimately subsequently permitted.

13 Does this refresh your recollection?

14 A. Yes, sir, it does.

12:01 15 Q. Do you have any comments you want to make about the  
16 elevations before I show you the floor plans?

17 A. The elevations are drastically different.

18 Q. Here is the Preston Wood & Associates plan followed by  
19 Cameron Architects' plan. I may be comparing -- This looks  
12:02 20 like this may not be the same kind of drawing.

21 Do I need to give you something different?

22 A. No.

23 Q. Okay.

24 A. So, on the left is the floor plan with the electrical  
12:03 25 switching and lighting overdrawn on top of it for extra



*Bachman - Cross by Mr. Zummo*

1 information.

2 But I think you can see that these are  
3 drastically different.

4 Q. I found the correct one.

12:03 5 A. Oh.

6 Q. So, I'm going to put the first floor plans as close to  
7 each other as I can get them.

8 A. I think you can see, from the location of the stair and  
9 what that causes in the plan, that these are essentially --  
12:03 10 well, they're unrecognizable cousins. You can't tell where  
11 one would be similar to the other in meaningful ways.

12 Q. Here are the second floors.

13 A. Same comment; that the location of the stairtower to the  
14 corner or to side wall makes a radical difference in getting  
12:04 15 up, and then you have matriculation from there to the upper  
16 floor, which is different yet again.

17 MR. STROTHER: Okay. Professor, with that, I'm  
18 going to pass the witness. Thank you.

19 MR. ZUMMO: May I proceed, Your Honor?

12:04 20 THE COURT: Go right ahead.

21 CROSS-EXAMINATION

22 By Mr. Zummo:

23 Q. Professor Bachman, do you remember meeting me when you  
24 gave your deposition?

12:04 25 A. Yes, sir. Good morning.

*Bachman - Cross by Mr. Zummo*

1 Q. It's good to see you again.

2 I want to start with these plans that you just  
3 discussed with Mr. Strother because I want to make sure that  
4 nobody's trying to confuse or being confused.

12:04 5 A. Please.

6 Q. The ones that you just compared side by side, the  
7 Preston Wood 1171 to the third -- the second Cameron set of  
8 plans --

9 A. Yes, sir.

12:05 10 Q. You're not trying to say that the first set of Cameron  
11 plans was the same as the second set of Mount Vernon Cameron  
12 plans, are you?

13 A. No.

14 Q. In fact, you understand -- You said that you understood  
12:05 15 that the second set of Cameron plans was provided later. It  
16 was actually after -- It was done after this lawsuit was  
17 filed. Correct?

18 A. I didn't familiarize with all the sequence here.

19 Q. But you -- when you looked at the Preston Wood 1171 plan  
12:05 20 and compared it to the first version of Cameron's Mount  
21 Vernon plan, you concluded that that was identical?

22 A. Yes. It was copied.

23 Q. And do you now understand how it came to be an identical  
24 copy?

12:06 25 A. I don't question. I was merely comparing them.

*Bachman - Cross by Mr. Zummo*

1 Q. So, you didn't ask, 'How did this happen?'

2 A. I wasn't asked to opine about it. No, sir.

3 Q. Did you ever -- Did anybody ever tell you that it  
4 happened because Mr. Cameron took the CAD files from Preston  
12:06 5 Wood for that design, the 1171, and downloaded them onto his  
6 own computer and then put his logo on and made a couple of  
7 changes and called it his own plan? Did anybody ever tell  
8 you that that's what happened?

9 A. I -- I feel like I'm being asked to take sides in  
12:06 10 conversations about people's intentions and actions, and I'm  
11 a little uncomfortable with that, sir.

12 Q. No, sir. That wasn't my question.

13 I just asked: Did anybody ever tell you that  
14 that's what happened?

12:07 15 A. [Pause] There's been a lot of conversation and drawing,  
16 sir. I concede that that probably was my understanding of  
17 the chronology.

18 Q. And, similarly, do you understand that the chronology of  
19 how Mr. Cameron's alleged version of the Nagle plans had so  
12:07 20 many similarities to the Preston Wood D5-214 plan was it was  
21 the same chronology?

22 Do you have that understanding; that he  
23 downloaded the Preston Wood CAD files for the D5-214, then  
24 made changes to those, put his logo on it and called it his  
12:08 25 own?

*Bachman - Cross by Mr. Zummo*

1 A. If by "downloaded" you mean he acquired it from Preston  
2 Wood Associates, yes.

3 Q. And you understand "downloading" means taking a digital  
4 version and actually installing a copy of that on your own  
12:08 5 computer or your own server?

6 A. My understanding was that he purchased it rather than  
7 took it.

8 Q. So, your -- And, in your understanding of that, was it  
9 your understanding that whatever Preston Wood got paid for a  
12:08 10 license to use the D5-214 that they retained?

11 A. I have no absolute knowledge of that. Just that there  
12 was some kind of a good-faith effort to do business as  
13 usual.

14 Q. We're going to look at a document that I hope will help  
12:08 15 refresh your memory or clear that up in just one second, but  
16 I want to ask you about this phrase because you've used it  
17 earlier today and it's used in this document we're going to  
18 look at.

19 You said about the third version of a Cameron  
12:09 20 plan that it was done -- or a Wooten plan that it was done  
21 from scratch?

22 A. Appeared to be. Yes, sir.

23 Q. What do you mean by a plan being done "from scratch"?

24 A. Without direct knowledge of other designs that might  
12:09 25 have been derivative of.

*Bachman - Cross by Mr. Zummo*

1 Q. And you've used that term "derivative".

2 Is that a term that architects use?

3 A. Certainly.

4 Q. And I'm going to ask you in terms of what I understand  
12:09 5 the Court may instruct the jury to be a legal term of  
6 "derivative", and that's one work that is based upon one or  
7 more pre-existing works.

8 Is that definition consistent with your  
9 architect definition of a "derivative"?

10 A. Nothing is consistent in architectural theory.

11 Q. Okay.

12 A. May I elaborate just a little?

13 Q. Okay.

14 A. So, to talk a little in context, works of art build upon  
12:10 15 what's gone before without replicating it.

16 So, for example, Campbell draws a soup can.  
17 The next guy doesn't come along and paint a string of beans  
18 can. Right? We move on to something different.

19 Architecture can't do that. Architecture is  
12:10 20 bound up in, you know, 30,000 years of what's already been  
21 done.

22 So, what we're constantly doing is, frankly,  
23 what happens in law. We work with precedent. We work with  
24 formal precedents and technical precedents and historic  
12:11 25 precedents, things that might be called "derivative works".

*Bachman - Cross by Mr. Zummo*

1 And we use those in different ways. The same way that  
2 precedent is used in law to make new law, we use precedent  
3 in architecture to make new architecture.

4 So, everything is derivative because  
12:11 5 everything's been done. I'm sorry. Ideas come from other  
6 ideas without owing their essence to that first idea.

7 Is that a helpful answer, sir?

8 Q. I don't know.

9 Would you tell me what you mean when you said  
12:11 10 that one thing was derivative from another, just in terms of  
11 an architect, in the context of these designs in this case.

12 A. I'm trying to remember where I did.

13 Q. Well, then, let's -- Since you and I have both gotten  
14 off in the weeds, let's see if we can find our way back.

12:12 15 A. I want to be helpful.

16 Q. I know. I don't think for a minute that you're trying  
17 to dodge a question. So, don't worry about that.

18 A. Thank you.

19 Q. We're trying to converse here.

12:12 20 Let me just ask: Was the Cameron version of  
21 the Nagle design a derivative of Preston Wood's D5-214  
22 design?

23 A. To some extent.

24 Q. And, from my understanding of the legal definition,  
12:12 25 would you agree that the Cameron Nagle design was based upon

*Bachman - Cross by Mr. Zummo*

1 a pre-existing work, the Preston Wood D5-214?

2 A. Again, to some extent.

3 Q. Now, would that be consistent with what you, as an  
4 architect, would call a "derivative"?

12:13 5 A. Here again, everything is continuous rather than  
6 dichotomous. Again, to some extent.

7 Q. Okay.

8 MR. ZUMMO: Would you put up Plaintiff's Exhibit 3,  
9 please.

12:14 10 THE COURT: Now, what is that? What exhibit  
11 number?

12 MR. ZUMMO: This is Plaintiff's Exhibit 103, Your  
13 Honor.

14 THE COURT: 103.

12:14 15 MR. ZUMMO: I misread.

16 By Mr. Zummo:

17 Q. Have you ever seen the e-mail that's in the middle of  
18 the first page of Plaintiff's Exhibit 103?

19 A. I don't believe so. No, sir.

12:14 20 Q. Do you see that the "Subject" line is "Credit for  
21 0 Nagle plans"?

22 A. Yes. I see that.

23 Q. And do you see a reference to the D5-214 plan in the  
24 text of the e-mail?

12:14 25 A. Yes, sir, I do.

*Bachman - Cross by Mr. Zummo*

1 Q. And do you see that the author of that e-mail has an  
2 e-mail address at urbanliving.com?

3 A. I see that.

4 Q. So, did you know that Urban Living told this to Samantha  
12:14 5 Wood at Preston Wood & Associates, that "We will be needing  
6 a credit back for Plan D5-214-1921-S-8. After receiving the  
7 CAD file, Stephen realized that there were some major issues  
8 with the stairs and ended up having to draw a plan from  
9 scratch. So, we didn't even use this plan"?

12:15 10 Did you know that that e-mail existed?

11 A. I think I knew some of that anecdotally, but I've never  
12 seen the e-mail.

13 Q. And do you see that in the e-mail this person from Urban  
14 Living uses the term "from scratch" that you and I talked  
12:15 15 about a few minutes ago?

16 A. Yes.

17 Q. So, in the e-mail, Urban Living is telling Preston Wood  
18 that Stephen Cameron ended up having to draw a plan from  
19 scratch.

12:15 20 Do you see that they said that?

21 A. I see that they said that in the e-mail.

22 Q. And you see that she also said, "We didn't even use this  
23 plan."

24 Do you see that?

12:16 25 A. Yes.



*Bachman - Cross by Mr. Zummo*

1 Q. Based on what you know about the two plans, were either  
2 of those statements true or were they false?

3 A. Were they true, that they were drawn from scratch?

4 Q. Let's start there.

12:16 5 Was that a true statement?

6 A. I would favor that over they were "derivative of".

7 Q. So, you think that the Cameron Nagle plan was drawn from  
8 scratch?

9 A. More than I think it is a direct copy.

12:16 10 Q. And are you saying you also agree that the Cameron plan  
11 was an example of "We didn't even use the Preston Wood  
12 plan"?

13 A. This is a conversational e-mail, not a technical  
14 description of what happened. So, I am not going to

12:17 15 characterize the subject matter at question as this being a  
16 description of what happened.

17 Q. You're not going to characterize what the e-mail says as  
18 a description of what happened? Is that what you mean?

19 A. Not in full, no.

12:17 20 Q. That's because what it describes didn't happen. It's  
21 not true what's said in the e-mail. Correct?

22 A. I didn't say that. No. I'm saying this is a  
23 conversational e-mail. It can't be a full, verbose  
24 description of the problem.

12:17 25 Q. Do you understand it to be the position of the

*Bachman - Cross by Mr. Zummo*

1 Defendants in this lawsuit that, while they actually copied  
2 and made derivatives of Preston Wood's designs, it's all  
3 right because what was copied, in their opinion, is not  
4 protectable? Do you understand that to be their position?

12:18 5 A. "Protectable" is a legal definition that I am not  
6 comfortable responding to.

7 Q. Well, does the e-mail say, 'We think we can copy your  
8 plan because nothing in it is protectable'? Does the e-mail  
9 say that?

12:18 10 A. Of course not.

11 Q. Why do you say, "Of course not"?

12 A. There's no language there, sir.

13 Q. Okay. If that was what they really believed in May 2014  
14 through the end of 2014, when Mr. Cameron was copying the  
12:19 15 plan, do you think, as an architect, that that's a proper  
16 way to describe how you're using the design?

17 THE WITNESS: Your Honor, I'm confused by the  
18 question.

19 THE COURT: Rephrase it, please.

12:19 20 By Mr. Zummo:

21 Q. Let's just try to make it more simple.

22 A. Please.

23 Q. I'm going to try.

24 If Urban Living really thought in May 2014  
12:19 25 that it was all right to copy Preston Wood's CAD files and

*Bachman - Cross by Mr. Zummo*

1 make derivatives from Preston Wood's CAD files, don't you  
2 think that it would have been the right thing to do for  
3 Urban Living to just say so?

4 A. It's conjecture. I'm sorry. I'm not going to -- I'm  
12:19 5 not going to guess.

6 Q. So, you don't have an opinion about whether it's right  
7 or wrong to say you're not going to use the plan and you're  
8 going to draw up something from scratch when you're really  
9 going to copy the CAD files and use them?

10 A. Again, I don't know that that's a full and verbose  
11 description of what actually happened, and I don't want to  
12 respond to it.

13 Q. Would you ever take another designer's or architect's  
14 CAD files without their permission and make a copy of them  
12:20 15 and call it your own?

16 A. No.

17 Q. Would you ever take another architect's or another  
18 designer's designs and modify those designs but clearly make  
19 a derivative and call it your own --

12:20 20 A. Yes.

21 Q. -- without their permission?

22 A. Yes.

23 Q. You would?

24 A. Yes.

12:20 25 Q. Would you -- In your classes at the University of

*Bachman - Cross by Mr. Zummo*

1 Houston, do you teach aspiring architects that it's all  
2 right to take some other person's design and copy it without  
3 their permission?

4 A. Sir, I just spoke to the idea of precedent as being the  
12:21 5 only way forward for architecture.

6 Q. So, you would teach your students that that's okay?

7 A. We're not talking about the same thing.

8 Q. Well, I'd like you to listen to my question.

9 Would you teach your students that it's all  
12:21 10 right to do what Stephen Cameron did here?

11 MR. STROTHER: Your Honor, at this point I object.  
12 It's gone on for five minute. He's not an expert in  
13 architectural ethics.

14 THE COURT: Sustained to the form of the question.  
12:21 15 By Mr. Zummo:

16 Q. Do you know of any architecture program anywhere in the  
17 country where students are taught that it's appropriate to  
18 do what Stephen Cameron did here?

19 MR. STROTHER: Your Honor, same objection.

12:21 20 THE COURT: Sustained.

21 Q. Do you approve of what Stephen Cameron did here?

22 MR. STROTHER: Your Honor, same objection.

23 A. I need --

24 THE COURT: Sustained. I'm going to let the  
12:22 25 jury -- You've heard all the evidence. You've heard the

*Bachman - Cross by Mr. Zummo*

1 impressions and the expert testimony of two different  
2 experts.

3 And, as to that form of the question, I'm  
4 going to leave that to the jury. So, sustain the objection.

12:22 5 By Mr. Zummo:

6 Q. You said something about --

7 THE COURT: By the way, it doesn't mean either side  
8 can't argue it to the jury in summation. Okay? I just want  
9 you to know that.

12:22 10 MR. ZUMMO: I understand, Judge.

11 THE COURT: But, as to this witness, that line,  
12 you've got to move on.

13 MR. ZUMMO: I'll move on.

14 THE COURT: Okay.

12:22 15 By Mr. Zummo:

16 Q. When you were explaining to Mr. Strother your personal  
17 design experience with single-family homes, I heard you talk  
18 about remodeling homes in the Heights, designing your own  
19 home that you worked on for two years.

12:22 20 Do you have a seal as an architect?

21 A. Yes, I do. AI-10141.

22 Q. Are you a member or have you ever been a member of the  
23 American Institute of Building Design?

24 A. No.

12:23 25 Q. Is there a single townhouse anywhere in Houston that's

*Bachman - Cross by Mr. Zummo*

1 built from plans that has -- that have your seal on them?

2 A. No.

3 Q. Is there anybody living in a townhouse anywhere in the  
4 world that you personally designed?

12:23 5 A. There's one in The Woodlands. Yes.

6 Q. Is your seal on that design?

7 A. I wasn't an architect at the time.

8 Q. Now, I ask that because -- Tell me if I heard you say  
9 this correctly -- Well, first of all, have you ever met

12:23 10 Preston Wood?

11 A. I have not.

12 Q. Can you point him out in the courtroom?

13 A. I could not. No, sir.

14 Q. Have you ever talked to him, you know, like, over the  
12:23 15 phone?

16 A. I have no familiarity with him whatsoever.

17 Q. Have you ever read any description or any testimony from  
18 Mr. Wood on his design process, his thought process, to  
19 create the designs that we've seen in this lawsuit?

12:24 20 A. I have not.

21 Q. Did I hear you correctly during your direct examination  
22 that to say that the Preston Wood design that you were  
23 looking at was a solid piece of thinking, designing and  
24 planning is a stretch? Did you say that?

12:24 25 A. I did.

A. Cameron - Direct by Mr. Strother

1 Q. And you can say that about somebody who spent 40 years  
2 learning to design townhomes and managed to make a living  
3 and built a successful company designing townhomes for  
4 40 years without ever hearing why he made the decisions he  
12:24 5 made to create that design?

6 A. Sir, I didn't say it about a person. I said it about a  
7 design.

8 MR. ZUMMO: I don't have any other questions, Your  
9 Honor.

12:25 10 THE COURT: Okay. Go right ahead.

11 MR. STROTHER: No more questions, Your Honor.

12 THE COURT: Thank you, sir. You may step down.

13 You're excused. You're free to leave.

14 Call your next witness.

12:25 15 MR. STROTHER: Your Honor, Defendants call Angela  
16 Cameron to the stand.

17 THE COURT: Raise your right hand.

18 **ANGELA CAMERON, CALLED BY THE DEFENDANTS, SWORN**

19 MR. STROTHER: Your Honor, could we switch over to  
12:25 20 my laptop?

21 THE COURT: Yeah. Hang on one second.

22 MR. STROTHER: Thank you.

23 DIRECT EXAMINATION

24 By Mr. Strother:

12:26 25 Q. Miss Cameron, would you please introduce yourself to the

A. Cameron - Direct by Mr. Strother

1 jury.

2 A. My name is Angela Cameron. I'm married to Stephen  
3 Cameron, owner of Cameron Architects.

4 Q. Miss Cameron, do you need a glass of water?

12:26 5 A. No. I'm just scared. I've never testified before.

6 Q. Okay.

7 THE COURT: You're all right. You'll do fine.

8 Q. Well, let's get one thing out of the way.

9 What is it that you do for a living? Because  
12:26 10 this is a little funny.

11 A. It is very funny. I am an appellate lawyer. So, that  
12 means I stay out of the courtroom and I write papers.

13 THE COURT: Well, welcome to the trial aspect.

14 THE WITNESS: I grade all their papers and say what  
12:26 15 they did wrong.

16 THE COURT: And then, ultimately, then either the  
17 State Court of Appeals or, in my mind, the Circuit, they're  
18 going to rule on it.

19 MR. ZUMMO: Your Honor, I'd object because I think  
12:26 20 what appellate lawyers do is they come on after the battle  
21 and shoot the wounded.

22 THE WITNESS: That's true, too.

23 THE COURT: All right. I'm going to tell that --  
24 Most of my colleagues on the appeals court have heard this.

12:26 25 When I took over the state court, when I was



*A. Cameron - Direct by Mr. Strother*

1 elected on the state court, there was one judge -- some of  
2 you may not remember -- Wilmer Hunt. His picture is still  
3 up in the courthouse. For 23 years, he was judge of that  
4 trial court. Then Judge Pressler came in and then I did.

12:27 5 And they would say about Judge Hunt, when he  
6 got an appeal opinion down from the Court of Appeals --  
7 okay? -- he would turn to the last page to see if he was  
8 affirmed or reversed and, if he got reversed, he'd say,  
9 "Well, they can reverse me, but they can't make me read it,"  
12:27 10 and he'd toss it in the trash can.

11 Now, that's not what we do around here. And I  
12 know my colleagues on the Court of Appeals have heard me  
13 tell that story.

14 But we're ready to proceed. Go on.

12:27 15 MR. STROTHER: Okay.

16 By Mr. Strother:

17 Q. Just to make sure there's no confusion for the jury,  
18 first of all, you're not here to testify as a lawyer about  
19 anything?

12:27 20 A. Absolutely not.

21 Q. And, in fact, in your practice, do you do civil law?

22 A. No. I'm a criminal defense attorney.

23 Q. All right. What do you have to do with Cameron  
24 Architects?

12:28 25 A. I'm married to the owner.

A. Cameron - Direct by Mr. Strother

1 Q. Okay.

2 A. As far as -- I am not employee. I -- We're a

3 mom-and-pop store. He does the business part. I do the

4 books and I do them from my house. I write the checks. I

12:28 5 write the -- you know, pay the bills, essentially, just like

6 I do our personal bills.

7 Q. Are you the bookkeeper for Cameron Architects?

8 A. I'm the only one who does the books. I don't know if

9 I'd even qualify as a bookkeeper.

12:28 10 Q. Do you use any accounting software?

11 A. I use a program called "Quicken". I don't know if

12 that's an accounting software as such. It's more like a

13 check register-type thing.

14 Q. When it comes time every year to have Cameron Architects

12:28 15 do their taxes, how does Cameron Architects do their taxes?

16 A. Well, what happens is Quicken has an ability to run a

17 report -- Can I back up?

18 Q. Yes. Please.

19 A. As expenses come in through the year, I input them into

12:29 20 the computer and at the end of the year I can say, 'Run

21 register report from January 1 to December 31st.'

22 What that does is it -- Because, as I'm

23 putting them in, I'll say, well, this is payroll or this is

24 printing or this is -- whatever it is. Then the year -- It

12:29 25 runs this report and it adds up all of the things in those

A. Cameron - Direct by Mr. Strother

1 particular categories.

2 And, so, I take those reports and each  
3 account, like the checking account versus the credit card  
4 account versus a different checking account -- you have to  
12:29 5 run one of those for each register.

6 So, at the end of the year I do that. And  
7 then I make an Excel spreadsheet, and this column is --  
8 Like, our current operating account is at Chase. So, it  
9 says "Chase". And then the next one says "SWA" because it's  
12:30 10 a Southwest Airlines card. And then the next one may be  
11 "Cash".

12 So, I have the columns going down like this up  
13 and down for the different accounts and then the different  
14 categories going the other way. I add all those up, put it  
12:30 15 on a different page, and I send that to an accountant who  
16 does our taxes.

17 Q. Okay. Do you understand that Cameron Architects has  
18 been sued for copyright infringement?

19 A. Yes.

12:30 20 Q. And do you understand that one of the questions the jury  
21 is likely to be asked is: What are the gross revenues that  
22 Cameron Architects earned and what are the deductible  
23 expenses?

24 A. Correct.

12:30 25 Q. Have you gone back and compiled Cameron Architect's

A. Cameron - Direct by Mr. Strother

1 records in that regard so the jury can look at things and do  
2 their calculation?

3 A. Yes.

4 Q. Okay. I want to go over some of those with you.

12:30 5 First of all, from a financial standpoint, do  
6 you know if Cameron Architects was involved in any form or  
7 fashion for the following three projects: EaDo Place,  
8 Patterson Street or Stanford Street?

9 A. We were not.

12:31 10 Q. Was Cameron Architects retained to do anything for any  
11 of those projects?

12 A. I had never heard of those projects until this lawsuit.

13 Q. Let's talk about the Mount Vernon project really  
14 quickly.

12:31 15 Did anyone ever pay anything to Cameron  
16 Architects for any work on the Mount Vernon project?

17 A. No.

18 Q. I believe Mr. Cameron got some questions from opposing  
19 counsel regarding a release.

12:31 20 Were you here for that testimony?

21 A. Yes, I was.

22 Q. A couple of quick questions about that concept.

23 Is your husband a lawyer?

24 A. No.

12:31 25 Q. Do you think he has any clue what "release" means?

*A. Cameron - Direct by Mr. Strother*

1 MR. BONHAM: Objection, Your Honor. Speculation.

2 THE COURT: Sustained.

3 MR. STROTHER: Okay.

4 By Mr. Strother:

12:31 5 Q. Okay. Do you know who the builder was on the Mount  
6 Vernon project?

7 A. I think someone said yesterday, but I don't remember.

8 Q. A Mr. Bindal?

9 MR. BONHAM: Objection, Your Honor. She said she  
12:32 10 doesn't know.

11 THE COURT: Say again.

12 MR. BONHAM: Objection. She just testified she  
13 doesn't know.

14 THE COURT: Okay. Next question.

12:32 15 MR. STROTHER: Okay. Your Honor, I think she said  
16 that she heard them say it yesterday but she didn't  
17 recognize the name, and I was repeating the name to her.

18 THE COURT: All right. Then, come at it a  
19 different way.

12:32 20 By Mr. Strother:

21 Q. Do you recognize the name "Mr. Bindal"?

22 A. I have seen that name or heard it in this courtroom.

23 Q. Is Cameron Architects going to seek money from the  
24 builder of Mount Vernon?

12:32 25 A. Absolutely not.

A. Cameron - Direct by Mr. Strother

1 Q. Has Cameron Architects executed a legal release of that,  
2 though?

3 A. No. And we never have on anybody who hasn't paid us.

4 Q. Well, I mean, why isn't Cameron Architects seeking to be  
12:32 5 paid for those plans?

6 A. Because we got sued and I'm not going to bring that --  
7 go after somebody else over a problem. That's just bringing  
8 more people into this mess.

9 Q. Okay. Let's focus on the Nagle project.

12:33 10 I'm going to show you Exhibit 7 from  
11 Defendants' exhibits.

12 Is this a check that the builder of Nagle paid  
13 to Cameron Architects?

14 A. It is a check that is designated it's for Nagle. I  
12:33 15 don't know who signed it.

16 Q. Do you recognize the name Oppidan or "Oppidan" down  
17 here?

18 A. Yes.

19 Q. Is this 100 percent of the money that came in the door  
12:33 20 to Cameron Architects for those plans?

21 A. Yes.

22 Q. It's true, however, that Cameron Architects was hired  
23 and was going to be paid more than that. Right?

24 A. I think that's what the contract that was introduced  
12:34 25 yesterday said, but this is all we got.

*A. Cameron - Direct by Mr. Strother*

1 Q. Okay. Do you know why Cameron Architects only got that  
2 much?

3 A. Because this lawsuit started, is my understanding, but  
4 to -- That's my understanding.

12:34 5 Q. Okay. Let me -- And did Cameron Architects have an  
6 arrangement with Urban Living to pay any money that it  
7 received on this project?

8 A. Yes. We had a 50-50 referral fee agreement.

9 Q. I'd like to show you a document that's in evidence as  
12:34 10 Plaintiff's Exhibit No. 11.

11 Did you create this document from your Quicken  
12 files?

13 A. It's actually an Excel spreadsheet. I got the numbers  
14 from the register reports I was talking about.

12:35 15 Q. If we need it, I think the laser pointer is still up  
16 there with you. Would you look and see.

17 A. Yes, sir.

18 Q. If you ever need to point something out, please do.

19 A. Okay.

12:35 20 Q. Tell me what this spreadsheet calculates.

21 A. Well, first off, can...?

22 Q. Yes.

23 A. This is an incorrect spreadsheet. This was the first  
24 one that I prepared. As I said, we're a mom-and-pop store.

12:35 25 We don't do business reports. I don't -- Either we have

A. Cameron - Direct by Mr. Strother

1 money in the account or we don't, and that's how we spend  
2 it.

3 For this, in response to discovery, I was  
4 asked to calculate overhead. I'm not an accountant. I'm  
12:35 5 not a bookkeeper. I googled it and it said expenses --  
6 direct expenses for that particular project would be direct  
7 expenses and other things would not.

8 That's -- This list here on the left are the  
9 things that were payments made by Cameron Architects in the  
12:36 10 year 2014 for those different categories. This was the  
11 first one I made. This is an incorrect overhead --  
12 calculation.

13 Q. And I want the jury to fully understand that error in a  
14 moment. I don't want to hide it from them.

12:36 15 Tell them what the error was, and then let's  
16 go back and clean it up.

17 A. Okay. The only error on this one is, if you look down  
18 at "Working hours per year", right there, I calculated it  
19 there's 40 hours in a week times 52 weeks. I was -- That's  
12:36 20 how that number went there. That really probably should be,  
21 and on the second spreadsheet is, by 80 because we had two  
22 employees.

23 And, as a result, we are not claiming a net  
24 loss of 3,500 -- 35 whatever, 3,578. We got a profit about  
12:37 25 209 -- I want to say it's \$210-ish. Give me a calculator.



A. Cameron - Direct by Mr. Strother

1 I'll redo the math for you.

2 Q. We'll do that after -- I just want them to understand  
3 the spreadsheet first, and then you can give the correct  
4 figure there.

12:37 5 A. Okay.

6 Q. Because it's just one simple math mistake.

7 A. What do you want to know about the spreadsheet?

8 Q. Well, first of all, talk about what direct costs are.

9 A. Okay. In this case, the direct costs were the payroll  
12:37 10 cost, which was a total of \$1,721.11.

11 Where that number came from?

12 Q. Sure.

13 A. Our two employees -- why the timesheet -- and they go,  
14 you know, Monday, two hours on this, three hours on that,  
12:37 15 whatever. We went through their timesheets and pulled out  
16 the number of hours for the Nagle project.

17 Q. Can we look at those two exhibits really quickly?

18 A. Sure.

19 Q. The first one will be Exhibit 9, which is the timesheet  
12:38 20 for Keith Sapp.

21 A. Yes.

22 Q. So, tell me -- and I can turn to any pages that you need  
23 me to -- tell me what you did with this timesheet.

24 A. Okay. On the right side -- You see the left column  
12:38 25 where it says .3 with a little asterisk right there?

A. Cameron - Direct by Mr. Strother

1 Can you make that a little bigger, please.

2 Okay. And scoot it over. Keep going.

3 See, here, he said he spent three hours on  
4 Nagle. And then underneath that on a different project it  
12:38 5 was 1.5.

6 So, what I did is I took the spreadsheet and,  
7 if he had a Nagle, I put it over here on the end. And then  
8 I added it up and it was 10.5 hours.

9 So, I did that with all of his timesheets to  
12:38 10 come to a total number. I did that for both employees.

11 And if we can go back to the overhead thing --  
12 spreadsheet.

13 So, those totaled.

14 Then I took their total hours by what they got  
12:39 15 paid and I came up with that number, that \$1,727.11. That  
16 does include FICA.

17 Q. Okay. That includes the employer's payroll taxes?

18 A. Yes.

19 Q. All right.

12:39 20 A. Not TWC. Not employment, but just the matching portion  
21 of what is taken out for the employee. It's 6.2 percent for  
22 Social Security and 1.45 percent for Medicare.

23 Q. Okay. So, you've explained payroll costs. Now let's  
24 talk about the overhead costs.

12:39 25 A. Okay.

A. Cameron - Direct by Mr. Strother

1 Q. Let's start over here. And tell me where you pulled  
2 these numbers from.

3 A. Those -- When I was talking to you earlier about the  
4 different register reports, I listed an accountant. That's  
12:40 5 not toward any particular project. So, that's an overhead,  
6 was my understanding -- advertising, automobile, all of  
7 these type things -- and then that's where those came from,  
8 is from those register reports.

9 And I added the different columns for the  
12:40 10 different accounts, being the credit card account or the  
11 different bank account -- actual, like, checking-type  
12 accounts, and got the total.

13 Like, for the top one, I can tell you our  
14 accountant -- I paid her out of our Chase account. It may  
12:40 15 have been Comerica at that time, but that was one check that  
16 was paid.

17 Q. Okay. Let's see if you can explain what the register  
18 reports are.

19 A. Okay. That's the breakdown like -- It was Chase. I was  
12:40 20 wrong. UL had it -- It opened in April of 2014, a separate  
21 account to put UL money in. And then those are the totals.  
22 That -- These totals, that far right column, is transferred  
23 to the other -- first page.

24 Q. Okay. How did you decide which categories to include in  
12:41 25 this calculation?

A. Cameron - Direct by Mr. Strother

1 A. Well, there's not that many direct expenses. It would  
2 be payroll on that particular plan. The others I did not --  
3 I also excluded any other payroll-type expenses because  
4 that's not fair -- that's not part of overhead. Those  
12:41 5 expenses go to those projects.

6 So, I mean, it was more of a question of what  
7 I thought was direct and what I thought would be fair. I  
8 mean, like, I can't charge overhead for a professional fee  
9 that I paid to the City on Jack Black's plan. That's a  
12:42 10 direct expense to Jack Black's plan.

11 Q. Okay. Let me continue asking you about this column over  
12 here.

13 Is this generally a calculation where you have  
14 costs minus income equals this sum here?

12:42 15 A. Profit? Loss of profit? That's my understanding, is  
16 income minus expenses equals profit.

17 Q. Okay.

18 A. There is one thing on here that -- Yes. The \$11,450 was  
19 paid to Cameron Architects. However, at a later date, we  
12:42 20 wrote a check to Urban Living for 5,725. That's that  
21 50 percent.

22 Q. Okay. All right. I realize that this is an incorrect  
23 calculation. Tell us how you came up with it, and then I  
24 want you to correct it.

12:42 25 A. What I did is I added -- or Quicken -- not Quicken --

A. Cameron - Direct by Mr. Strother

1 sorry -- Excel added those numbers to get to the 143,578.40.

2 And then I took 40 hours a week times 52 weeks  
3 in a year to get 2,080. And I believe I divided 1,4- -- I'm  
4 sorry -- 143,578.40 by 2,080 to come up with a number of  
12:43 5 \$69.03.

6 Q. Okay. And that number, how does that play into your  
7 calculation of the overhead costs over here?

8 A. Then I took the 109 hour -- 109.75 hours that our  
9 employees spent on the Nagle plan and times'd it times that  
12:43 10 69.03, and that came up with overhead costs of \$7,576.04.

11 Q. And now let's do the correction.

12 So, walk me through what the calculation is.  
13 And if you need me to calculate a number, I can do so.

14 A. Okay. Well, the proper calculation would be -- Since we  
12:44 15 had two employees, it would be 52 times 80, is my  
16 understanding.

17 Q. Which would be double that number of 2,080?

18 A. Yes. And then you would divide the same 143,000 by  
19 whatever that number was. Since we're basically doing it in  
12:44 20 half, it would basically cut that \$69.03 in half. So, I  
21 think that comes out to right at -- I had it memorized. Now  
22 I don't. I want to say 34.51.

23 Q. That's correct.

24 A. Okay.

12:45 25 Q. So, what do you do with that \$34.51?

A. Cameron - Direct by Mr. Strother

1 A. You take that and you multiply it times that 109.75.  
2 And I can't do that in my head. I'm a lawyer, not a  
3 mathematician.

4 Q. Is that the number that you were talking about?

12:45 5 A. I don't think it's 41 cents. I think it's something  
6 else.

7 Q. Okay. Let me do that again.

8 You said it right the first time. \$34.51.

9 A. Okay. That sounds right.

12:45 10 Q. So, that number, 7,576 and four pennies, that would be  
11 divided by 2. Right?

12 A. You could do it that way or you could do the 109.75  
13 times 34.51.

14 Q. And that would be 3,787.47?

12:46 15 A. Without seeing your calculator, I can't answer that.

16 Q. Okay. But your testimony is this net loss described  
17 here would instead change to around a 200-dollar net profit?

18 A. 200, 210, something like that.

19 Q. Okay. Mr. Bonham had asked questions of Mr. Cameron,  
12:46 20 suggesting that he is habitually not a truth-teller.

21 Do you remember that testimony?

22 A. Yes, I do.

23 Q. Okay. Do you agree or disagree with that?

24 A. He's absolutely 100 percent incorrect.

12:47 25 MR. STROTHER: I pass the witness.

A. Cameron - Cross by Mr. Bonham

1 CROSS-EXAMINATION

2 By Mr. Bonham:

3 Q. Ms. Cameron, I'm going to be very brief on this.

4 A. Okay.

12:47 5 Q. When you're talking about Defense Exhibit 11, which is  
6 your series of reports --

7 THE COURT: Do you want to leave that up? Leave  
8 it? "Yes" or "no"?

9 MR. BONHAM: Take it down, please.

12:47 10 THE COURT: You're going to use some of yours?

11 MR. BONHAM: I may.

12 THE COURT: I'll switch it over in the meantime.

13 Go on.

14 MR. BONHAM: Thank you, sir.

12:47 15 By Mr. Bonham:

16 Q. The reports that have been in evidence as Defense  
17 Exhibit 11 --

18 MR. BONHAM: Take that down, please.

19 Q. -- that are in Exhibit 11, those are not something that  
12:47 20 Cameron Architects generated in the ordinary course of its  
21 business, are they?

22 A. It depends on which reports you're talking about.

23 Q. The ones that Mr. Strother was showing you that do your  
24 calculations for what you're contending the profits or  
12:48 25 losses are.

A. Cameron - Cross by Mr. Bonham

1 A. The spreadsheets are not. The register reports are.

2 Q. Let's focus on the spreadsheets for a moment.

3 Those were not generated in the ordinary  
4 course of Cameron Architect's business. Correct?

12:48 5 A. Correct.

6 Q. They were generated specifically for this lawsuit?

7 A. In order to answer your interrogatory. Yes.

8 Q. All right. Now, when we're talking about the  
9 overhead -- when you've added up all those categories of

12:48 10 overhead --

11 A. Yes, sir.

12 Q. -- do I understand you that the way you did it was you  
13 took out expenses that would be specific to other projects?

14 A. Can I back up for just a minute?

12:48 15 Q. Sure.

16 A. I don't think I told a correct statement.

17 When I do my taxes, I do that same  
18 spreadsheet. But because there were things in my tax  
19 spreadsheet, I made a new spreadsheet that -- things my tax  
12:49 20 spreadsheet would not be applicable to the overhead.

21 So, there is a spreadsheet that's made that is  
22 part of ordinary course of business, but that specific one  
23 was not.

24 Q. Again, I'm just asking about --

12:49 25 A. No. I don't want to lie.



*A. Cameron - Cross by Mr. Bonham*

1 Q. I understand.

2 THE COURT: Okay. Next question. Move on.

3 By Mr. Bonham:

4 Q. Now, we were talking about the overhead calculations  
12:49 5 that you made.

6 A. Yes, sir.

7 Q. And, if I understand it correctly, the way you did that  
8 was you started with all of the expenses and you took out  
9 the ones that were specific to particular projects?

12:49 10 A. Yes, sir.

11 Q. And then you take everything else and that's what you  
12 were then dividing by the number of hours?

13 A. By the number of hours in a workweek?

14 Q. Yes.

12:49 15 A. Yes, sir.

16 Q. And then you would multiply that by the number of hours  
17 that those two draftsmen were showing on the Nagle project?

18 A. Yes, sir.

19 Q. That's the methodology that you were using to calculate  
12:50 20 this?

21 A. Yes, sir.

22 Q. Okay. First of all, where did you get that?

23 A. Google.

24 Q. Where on Google?

12:50 25 A. I can't swear, but I believe -- I'm 99 percent sure that

A. Cameron - Cross by Mr. Bonham

1 it was an article in the *Houston Chronicle*. Because I don't  
2 know how to do that.

3 I typed up "How do you create" -- not  
4 "create" -- that's not the right word -- "calculate

12:50 5 overhead?" and I believe I got an article out of the *Houston*  
6 *Chronicle* off the internet. It was off the internet.

7 Q. So, again, you can't tell us whether or not this was  
8 from an accounting society or an expert or just some  
9 reporter for the *Chronicle*?

12:50 10 A. I'm 99 percent sure it was from the *Chronicle*. But as  
11 to the authorship, no, I cannot tell you.

12 Q. So, in terms of whether or not this is an acceptable  
13 methodology in the industry, you don't know?

14 A. I don't know.

12:51 15 Q. Now, the expenses that you have on overhead on the  
16 calculations you're doing, do those include expenses that  
17 Cameron Architects would have incurred whether or not it did  
18 the work on Nagle?

19 A. Yes. Other than the payroll ones that were what I call  
12:51 20 "direct costs".

21 Q. Correct. I'm not talking about those. I'm just focused  
22 on your overhead calculations.

23 A. Okay.

24 Q. They would include expenses like rent --

12:51 25 A. Right.

*A. Cameron - Cross by Mr. Bonham*

1 Q. -- Cameron Architects would have incurred whether or not  
2 it had done anything on Nagle or it had ever encountered  
3 Urban Living at all?

4 A. Correct.

12:51 5 Q. Now, you chose to include the number of hours for the  
6 two draftsmen. Correct?

7 A. Yes, sir.

8 Q. But Mr. Cameron also was working during this time,  
9 wasn't he?

12:52 10 A. Yes, sir.

11 Q. You didn't include his hours, did you?

12 A. No. Mr. Cameron doesn't do a timesheet. And the  
13 article I read was talking about how, in a law firm, there's  
14 somebody who's a manager -- managing partner and that that  
12:52 15 managing partner -- that person's income was part of the  
16 indirect overhead as opposed -- because it's not tied to the  
17 individual project. That's why I put it in indirect  
18 overhead versus it being a direct expense.

19 Q. My questions are -- Try it this way.

12:52 20 Mr. Cameron worked on the Nagle project,  
21 didn't he?

22 A. I assume so.

23 Q. He was the person whose seal was on the plans?

24 A. Yes. His seal was on the plans.

12:52 25 Q. And he would have supervised and spent time working on

A. Cameron - Cross by Mr. Bonham

1 that. Correct?

2 A. I assume so. But I'm not in his day-to-day business.

3 Q. Assume with me that Mr. Cameron -- Again, these  
4 draftsmen worked on other projects as well. Correct?

12:53 5 A. Correct.

6 Q. That's why you've done your allocations based on the  
7 number of hours that they recorded as having worked on?

8 A. Correct.

9 Q. If we assume that Mr. Cameron also worked --

12:53 10 A. Okay.

11 Q. -- on the Nagle project, we included his hours, then you  
12 would divide by a much larger number. Instead of it being  
13 two employees full-time --

14 A. -- it would make three.

12:53 15 Q. Three.

16 A. Yeah. If you wanted to do it that way, yeah.

17 Q. Correct. And, so, therefore, the numbers would be a lot  
18 less in terms of what your overhead allocations would be?

19 A. Well, I guess. But that would also -- If I knew what  
12:53 20 his hours were, I would take that -- what he got paid out of  
21 that and I'd put them onto "direct" and multiply it by --  
22 you know, the same way I did the others.

23 Q. But you made the choice -- Based on this article that  
24 you read in the *Chronicle* about how a law firm calculated  
12:54 25 things, you made the decision just to use the two

A. Cameron - Cross by Mr. Bonham

1 draftsmen's hours?

2 A. That's what I thought I was supposed to do.

3 Q. Now, with respect to Mount Vernon, you indicated that  
4 you made a decision not to try to collect that amount that  
12:54 5 was promised to be paid. Correct?

6 A. We are not trying to collect it. You're correct.

7 Q. That was Cameron Architects' decision not to try to  
8 collect that receivable?

9 A. I would say "yes". It's a decision and it's almost  
12:54 10 standard operating procedure in our business. We eat it  
11 most of the time.

12 Q. And, similarly, on Nagle, you were promised to be paid  
13 over \$22,000. Correct?

14 A. I believe that's what the contract was.

12:55 15 Q. That's right.

16 And Cameron Architects made the decision not  
17 to try to collect the remaining receivable. Correct?

18 A. Correct.

19 MR. BONHAM: Pass the witness.

12:55 20 MR. STROTHER: Your Honor, I have no further  
21 questions.

22 THE COURT: Thank you, ma'am. You may step down.  
23 You're excused. You're free to leave.

24 It's almost one o'clock. Is this a good time  
12:55 25 to break?

1 MR. STROTHER: Yes, Your Honor.

2 THE COURT: Okay. All right. It's right at a -- a  
3 few minutes before 1:00. We'll take a break at this time.  
4 Be back ready to resume at 2:15. We'll see you at that  
12:55 5 time.

6 (Jury not present)

7 THE COURT: Everyone at ease here.

8 What's the status of the jury charge? Have  
9 you gone over it and, at least, have points that you agree  
12:56 10 or disagree on?

11 MR. STROTHER: It's a good-looking group of things  
12 we don't agree on.

13 THE COURT: Yeah. It's 50-some-odd pages.

14 MR. STROTHER: But it's been vetted.

12:56 15 THE COURT: What do you mean by "vetted"?

16 MR. STROTHER: Well, each side knows the other  
17 side's intent and desire.

18 MR. BONHAM: And we've been working on this. We  
19 filed one with the original joint pretrial order. I filed a  
12:56 20 newer one a few days ago.

21 THE COURT: Yeah. I agree. That's good because --  
22 Let's put it this way. Whenever we start the charge  
23 conference, I'm going to need -- This is what I generally  
24 do. I mean, I'm welcome to alter it.

12:56 25 But the Plaintiff -- like, in a criminal case,

1 the government -- has got the burden of proof. I flip  
2 through, take a look at the Fifth Circuit pattern. I get to  
3 a page that you disagree on and I stop. All right?

4 "You object to it why?" Back and forth.

12:57 5 "What's your alternative? Let me see."

6 It can be in one document or it can be in a  
7 couple of separate ones, but I need to do it that way.  
8 Okay?

9 MR. STROTHER: Right.

12:57 10 THE COURT: Then what -- It's done, by the way --  
11 It's done around that table. I sit at the end of the table  
12 with the court reporter.

13 So, your objections are dictated into the  
14 record at the time we're around the table. So, the next day  
12:57 15 or the next -- when the jury comes back in, no more  
16 objections.

17 It's all -- You protect your record there.  
18 And then one side agrees. One side or the other runs all  
19 the copies. That way, every juror gets a copy.

12:57 20 I'm not pushing you on that, but that's the  
21 one thing I need to have ready, as close as you've got. I'm  
22 going to need a number of copies for myself and my staff so  
23 we can all have it. We'll all sit down there and we just  
24 start flipping pages.

12:57 25 MR. BONHAM: Again, what we've tried to do here --

1 Again, I've been through a few charge conferences with you.

2 THE COURT: Right.

3 MR. BONHAM: And, so, the way we've got it

4 formatted -- And I can tell you that a large amount of,

12:58 5 like, the preliminary instructions and some of the

6 instructions that we agree on for copyright, those are taken

7 right out of the charge that you gave in the *Kevin Young v.*

8 *Abshire* case from 15 years ago.

9 THE COURT: All right.

12:58 10 MR. BONHAM: Where we disagree, they're listed in

11 italics and it'll have like Plaintiff's proposed,

12 Defendants' proposed or something like that.

13 So, we should be -- I think we're ready with

14 what we've given you to do it the way that you like to do

12:58 15 it.

16 THE COURT: Whenever the time comes.

17 MR. BONHAM: They're there and we can run copies of

18 them for your staff immediately, if you'd like.

19 THE COURT: No. Because you're going to be maybe

12:58 20 changing it up to the last minute. But I need you to build

21 in some time to get those copies.

22 Let's see. One, two, three. Right? And

23 we're going to have four interns. Right? And they'll be

24 starting on Monday.

12:59 25 So, I'll give you the number we need and then



1 you run additional copies for everybody else.

2 Whoever is the lead attorney for that side on  
3 the charge needs to sit closest to me. All right?

4 Everybody can chime in because I want to keep it clean. I'm  
12:59 5 sure your clients don't want to do it again. Okay?

6 And every once in a while we're going to come  
7 to a question that maybe is a real major point -- okay? --  
8 and you want it in and he objects.

9 I say, 'All right.' If I go with you and he's  
12:59 10 right, this may be something you may want to look at again.  
11 So, you can confer a little bit.

12 In other words, we all know that some is  
13 reversible error; others, harmless error. If you all agree,  
14 there's no problem. If you want to get certain wording in  
12:59 15 that's not in any of the standard forms, that's fine if both  
16 of you agree.

17 But that's how I work it. Every once in a  
18 while we come to a question. Now, you heard what he said.  
19 Now, if I give it to you -- okay? -- if you lose, you lose  
13:00 20 and, if you win, you lose, if he's correct. And that goes  
21 both ways when you object like that.

22 All right. I'll see you back at 2:15. I've  
23 got something during the lunch hour, but it doesn't impact  
24 you.

13:00 25 Yes, sir.

*S. Cameron - Direct by Mr. Strother*

1 MR. STROTHER: I wanted to alert you, Your Honor,  
2 regarding scheduling. I anticipate finishing my evidence  
3 today. I have limited it to two more witnesses --

4 THE COURT: All right.

13:00 5 MR. STROTHER: -- Mr. Ramani --

6 THE COURT: Let's see what it looks like at the end  
7 of the day. Don't forget we're adjourning today about 4:30.

8 MR. STROTHER: Understood.

9 THE COURT: If we have to hold over, no problem.

13:00 10 You're moving quickly. All right.

11 (Lunch recess)

12 (Jury present)

13 THE COURT: Thank you. Be seated.

14 All right. Defense, call your next witness.

14:26 15 MR. STROTHER: Your Honor, Defendants call Stephen  
16 Cameron to the stand.

17 THE COURT: Mr. Cameron, do you want to again take  
18 the stand. And you're still under oath.

19 **STEPHEN CAMERON, THE DEFENDANT, PREVIOUSLY SWORN**

14:26 20 **DIRECT EXAMINATION**

21 By Mr. Strother:

22 Q. Mr. Cameron, good afternoon. How are you?

23 A. All right.

24 Q. All right. I have called you back up to the stand

14:27 25 because earlier during Plaintiff's case I kind of got in and

*S. Cameron - Direct by Mr. Strother*

1 then out with you without really getting into more detail  
2 about who you are and how did Nagle happen, things like  
3 that.

4 So, let me begin by asking you to tell the  
14:27 5 jury who you are.

6 Where are you from?

7 A. Oh, my goodness. I'm pretty much a Houstonian. I've  
8 lived here since I was, like, three, four. Grew up inside  
9 the loop, West U. Went to Lamar.

14:27 10 Had always worked in drafting and drawing and  
11 drew a lot by hand; and, so, that kind of led me into  
12 architecture. I went to Texas Tech and got my bachelor's  
13 degree.

14 And then worked for R&T Architects for a  
14:28 15 couple of years so I could sit for the exam. Don't  
16 recommend that to just about anybody. That was brutal.

17 Q. Before you race all the way to today, let me back you  
18 up.

19 We were talking about the story we heard from  
14:28 20 Mr. Wood about him having an interest in design from a very  
21 early age, and I heard a story from you.

22 When did you get interested in architecture?  
23 What's the first time you can remember being --

24 A. Good grief. I've always drawn. You know, it just  
14:28 25 started as a kid.

*S. Cameron - Direct by Mr. Strother*

1 Q. When did you first build something?

2 A. Well, I did build that little fort in the backyard. I  
3 drew it and designed it and built a fort. I was always good  
4 with my hands.

14:29 5 Q. Was that the first architectural drawing you ever did?

6 A. I imagine. I was pretty young. Definitely.

7 Q. What was it that led you to architecture rather than  
8 another course of study?

9 A. I always drew. I mean, I had been drawing since I could  
14:29 10 pick up a pencil. So, architecture seemed to be the best  
11 fit for solving problems and -- Because I like science, but  
12 I didn't read so good. So, I like drawing. Don't have to  
13 talk.

14 Q. Do you consider yourself not much of a talker?

14:29 15 A. Not much.

16 Q. Okay.

17 A. I listen.

18 Q. All right. You had told us about your degree from Texas  
19 Tech.

14:29 20 What kind of degree was that?

21 A. It was a bachelor's of architecture, about a five-year.  
22 And then you have to sit for three years before you can take  
23 the exam.

24 Q. When did you take the exam?

14:30 25 A. In '94. The first one was '93 and then '94. Took it

*S. Cameron - Direct by Mr. Strother*

1 twice for one section, which is not bad.

2 Q. So, start there.

3 What did you do after you were first a  
4 licensed architect?

14:30 5 A. I was working for Marion Spears at the time.

6 Q. Who is Marion Spears?

7 A. He's a -- primarily a residential design firm. We  
8 specialized in the box.

9 Q. What does that mean?

14:30 10 A. Well, builder specs, you know, Lennar and Dover and, you  
11 know, bunch of the big names back then. So, we -- You know,  
12 we cranked them out. But we had designed many single-family  
13 custom as well. But, you know, the builder specs were kind  
14 of the big niche.

14:31 15 The first project I worked on -- I came in as  
16 a night shift by myself because there wasn't enough  
17 stations, and the first project was townhomes. I remember  
18 what they looked like, but I can't remember where they were.  
19 It was a few days ago.

14:31 20 Q. What did they look like?

21 A. Huge. They were probably -- See, you had a two-car in  
22 the front and an entry. So, they were probably 35 foot wide  
23 by 65, 70 foot deep.

24 They were over -- They were up against the  
14:31 25 Buffalo Bayou. And I remember the structures. Getting to

*S. Cameron - Direct by Mr. Strother*

1 go see them getting built was amazing. The foundations were  
2 simply monstrosities. But it was fun working on those for  
3 the first time.

4 Q. And that was with Marion Spears?

14:32 5 A. Yes.

6 Q. How long were you there?

7 A. I left in 2000, started my own company.

8 Q. Okay.

9 A. But we did townhomes starting in about '94 and  
14:32 10 throughout.

11 Q. All right. So, how many townhomes have you designed?

12 A. Oh, hundreds, probably a thousand.

13 Q. Do you think that they're significantly different from  
14 each other?

14:32 15 A. No. No. I found one for a client last week that we did  
16 in 2000 that fit perfect.

17 Q. Interesting you picked the year 2000. Let me ask you  
18 this question.

19 Let me move you to the Mount Vernon project  
14:33 20 real fast. I want to make sure -- Let me try to make sure  
21 that the jury understands what happened with the Mount  
22 Vernon design. Okay?

23 Was Cameron Architects retained by someone to  
24 use a PWA stock plan for the Mount Vernon project?

14:33 25 A. Yes.

*S. Cameron - Direct by Mr. Strother*

1 Q. Do you remember who it was?

2 A. No.

3 Q. Was it through Urban Living?

4 A. Yes.

14:33 5 Q. After you received the stock plan who worked on it?

6 A. I don't know. It was either Chad or Keith.

7 Q. At the time, did Cameron Architects have two people  
8 working under you?

9 A. Yes.

14:33 10 Q. And how many people do you have working under you now as  
11 far as designers or architects?

12 A. Just one.

13 Q. Who is that?

14 A. Chad.

14:33 15 Q. Is Chad an architect or designer?

16 A. Designer.

17 Q. Okay. So, back at the time when you had two people  
18 working for you plus -- Is Keith a designer or an architect?

19 A. Drafter.

14:34 20 Q. A drafter.

21 What's the difference between a drafter and a  
22 designer and an architect?

23 A. Well, a drafter just kind of follows instructions and  
24 tries to draw what he's told. A designer can make decisions  
14:34 25 and change, and they solve problems. Same with an

*S. Cameron - Direct by Mr. Strother*

1 architect. I mean, we primarily are there to solve the  
2 problem and make it work.

3 Q. Is there a difference between designers and architects?

4 A. Yes. I know there's a real good answer for that,  
14:34 5 but....

6 Q. Are there things that designers are not permitted to  
7 work on by law, if you know?

8 A. I think commercial is 5,000 square feet and up; you have  
9 to be an architect. Designers, I don't think there's a  
14:35 10 limit on residential.

11 Q. Okay. So, let's go back to Mount Vernon.

12 You've already testified that there were very  
13 few changes from the original PWA plan and the first  
14 iteration of the Mount Vernon plan. Right?

14:35 15 A. Yes.

16 Q. And who instructed you to create a new plan?

17 A. That project got put on hold for quite a while.

18 Q. Do you know how long?

19 A. Not off the top of my head. I'd have to look at  
14:35 20 paperwork.

21 Q. Over a year?

22 A. Probably.

23 Q. Okay. So, my question was: Who directed you to -- who  
24 directed Cameron Architects to create a different plan?

14:36 25 A. Well, that would be Urban Living. I think it was a new



*S. Cameron - Direct by Mr. Strother*

1 builder didn't want that style and wanted something else.

2 Or the lawsuit. I mean, it was after that.

3 Q. It was after the lawsuit?

4 A. Yeah. Okay.

14:36 5 Q. No. I'm asking you.

6 Do you believe it was after the lawsuit that  
7 the change was made?

8 A. Yeah. Wasn't too long ago.

9 Q. Is it possible that the lawsuit is what caused the  
14:36 10 change in the plan?

11 A. I don't know.

12 Q. Fair enough.

13 What did Cameron Architects do to come up with  
14 a different plan?

14:36 15 A. I went to my stock plans and found something that would  
16 fit and modified it to solve the new builder's needs.

17 Q. So, that new plan, which is in evidence -- what year did  
18 you create the stock plan?

19 A. Well, the original one was 2000, but it had several  
14:37 20 renditions over the years. I mean, they all do.

21 Q. Kind of like the D5-214 family tree we saw?

22 A. Oh, yeah. Yeah. Similar. Years are different but, you  
23 know, same concepts.

24 Q. What led me to Mount Vernon was the year 2000 because I  
14:37 25 recall that that's where the stock plan came from. So,

*S. Cameron - Direct by Mr. Strother*

1 let's go back to the year 2000.

2 A. Okay.

3 Q. You formed your own company?

4 A. That was the year we started.

14:37 5 Q. What did -- Was that Cameron Architects?

6 A. Yes. Yes.

7 Q. What did Cameron Architects set out to do once you  
8 started your own company?

9 A. Well, I liked doing the stuff we were doing at MSA and,  
14:37 10 so, we continued that. And I brought a few clients with me  
11 and kept it running.

12 In 2000, we were primarily doing large custom  
13 homes, some townhomes but not many. By 2005 it had shifted  
14 all the way -- 90 degrees the other way, almost all  
14:38 15 townhomes and a few custom.

16 Q. What year did you say?

17 A. 2005.

18 Q. Okay. Was that an intentional shift Cameron Architects'  
19 part or just where your customers took you?

14:38 20 A. Just the way the customers go. Not on purpose.

21 Q. When did you start doing any kind of business with Urban  
22 Living?

23 A. Hmm. I had met him a little before 2014. I think we  
24 had done a few things, and I can't remember what the first  
14:38 25 thing was. I think it was an office building repair.

*S. Cameron - Direct by Mr. Strother*

1 Q. So, you said you had done a few things. You meant you  
2 had done some architectural designs for Urban Living --

3 A. Right.

4 Q. -- or one of Urban Living's customers?

14:39 5 A. Right. I think it was a restaurant. So, it was a while  
6 back.

7 Q. Was -- How did the relationship between Urban Living and  
8 Cameron Architects, where Urban Living would introduce  
9 builders to Cameron Architects and then PWA stock plans  
14:39 10 would be used, begin? Did that sentence make sense?

11 A. Yeah. That started somewhere around -- early in 2013.  
12 And I think it started rolling up around in May of '13  
13 and -- Actually, I don't remember the date when it started.  
14 But, yeah, we started doing several projects. I mean, it  
14:40 15 came fast.

16 Q. Where Cameron Architects was being asked to revise PWA's  
17 stock plans?

18 A. Yes.

19 Q. So, how did that start? It's as simple as: Did Urban  
14:40 20 Living talk to you? Did Preston Wood talk to you or PWA?

21 A. No. I had found out or somebody had called and said  
22 that they were moving to David Weekley and they had a lot of  
23 builders they needed to keep happy and if I would be willing  
24 to take over some of the -- because, you know, they were  
14:40 25 busy and --

*S. Cameron - Direct by Mr. Strother*

1 Q. "They" being Urban Living?

2 A. No. I think I talked to Sam first. No. I don't know.

3 Maybe I talked to Vinod and then Sam. I don't remember

4 exactly, but....

14:40 5 Q. But when you began --

6 A. They were going to do stock plans and then we would make

7 changes and get them to clients.

8 Q. Had you had a conversation in 2013 or 2014 with Ms. Wood

9 where you indicated to her that you would be -- Cameron

14:41 10 Architects would be revising PWA plans for Urban Living

11 builders?

12 A. Did I --

13 Q. Right. Did you ever talk with her about that?

14 A. We had conversations, but I don't know if it was about,

14:41 15 'Hey. I'm taking over this.' But we did talk.

16 Q. About what?

17 A. Well, I talked to her a few times when we started

18 getting plans on how to work them.

19 Q. What do you mean by "work them"?

14:41 20 A. Well, in autoCAD, you have a menu system and plans are

21 drawn with layers and blocks and --

22 Q. I'm going to interrupt every now and then to have you

23 define terms.

24 What is "autoCAD"?

14:42 25 A. AutoCAD is a drafting tool. That's what we draw with.

*S. Cameron - Direct by Mr. Strother*

1 Q. Is it a computer program?

2 A. It's a computer program, an expensive one. Occasionally  
3 I wish we'd go back to pencils.

4 Q. Do you ever use pencils? I'm curious.

14:42 5 A. Yeah. I mostly draw by hand -- I don't really draft  
6 much -- redlines and designs and stuff.

7 Q. Okay.

8 A. But the -- Menu system. To get their plans, we needed  
9 their menu system because they are created in a way with  
14:42 10 layers and their blocks. And, so, they had to send somebody  
11 over and set it up on one or two of our computers.

12 Q. Let me -- let me clarify.

13 PWA sent someone to your office to set your  
14 computers up so that your computers could work on PWA plans?

14:43 15 A. Yes.

16 Q. Do you remember who that was?

17 A. Scott. Scott Harris.

18 Q. Was that a Preston Wood & Associates employee?

19 A. Yes.

14:43 20 Q. Okay.

21 A. And good friend.

22 Q. Okay. Tell me about that. I want to know. Why is a  
23 Preston Wood & Associates employee a good friend of yours?

24 A. We went to college together, and we still keep in touch.

14:43 25 Q. Do you know if he's any longer with PWA?

*S. Cameron - Direct by Mr. Strother*

1 A. Yeah. He's still there. Well, he's at David Weekley,  
2 technically.

3 Q. Okay.

4 A. He's still with Preston.

14:43 5 Q. Mr. Wood had moved him and a lot of his employees over  
6 to David Weekley as part of their move?

7 A. Yes.

8 Q. So, we're at the point where PWA has sent your friend  
9 over to install things on your computer so that you can use

14:43 10 PWA plans?

11 A. A menu.

12 Q. A menu?

13 A. Yeah.

14 Q. Did Cameron Architects agree to a reduced rate to do  
14:44 15 these kinds of revisions?

16 A. What do you mean?

17 Q. So, on the Nagle plan -- which was originally 16 units,  
18 right?

19 A. Uh-huh.

14:44 20 Q. "Yes"?

21 A. Yes.

22 Q. The contract was for, I think, \$22,000 --

23 A. Yes.

24 Q. For 16 units.

14:44 25 Is that a normal price that Cameron Architects

*S. Cameron - Direct by Mr. Strother*

1 would charge for that kind of work?

2 A. Pretty close.

3 Q. So, no reduced rate, is what I was asking about.

4 A. No.

14:44 5 Q. All right. Do you remember what the first project or  
6 plan is that came in the door that was a PWA plan that  
7 Cameron Architects had been asked to revise?

8 A. I don't remember the first one.

9 Q. Are you familiar with how to use that PWA installed menu  
14:45 10 system?

11 A. Not very well.

12 Q. Did you personally work within that system to do any of  
13 the revisions?

14 A. No.

14:45 15 Q. Who was it that was doing the revisions?

16 A. Well, I hired a guy named Keith to come in and learn  
17 that because me and Chad are too used to ours. He struggled  
18 trying to learn how to do it. He figured it out, but I  
19 hired another guy to just take the plans.

14:45 20 Most of the changes were roof -- roof decks,  
21 and third floor stair towers usually had to be -- The code  
22 had changed. So, we had to make a couple code changes.  
23 Hopefully, that was most of what we did.

24 There were some that the clients really wanted  
14:45 25 changed, but, for the most part, the first couple went

*S. Cameron - Direct by Mr. Strother*

1 smoothly. Didn't have to change much.

2 Q. So, we're going to be talking about revisions that Keith  
3 did, but I want to make it clear to the jury.

4 Do you accept responsibility for Keith's  
14:46 5 revisions?

6 A. I'm the boss. Yeah.

7 Q. The buck stops with you?

8 A. Yeah. I always see the final redline.

9 Q. Okay. So, if mistakes existed in revisions done by  
14:46 10 Keith and they went out the door, is that ultimately on you?

11 A. Yes. I actually had to buy a roof because he didn't --  
12 he cheated. He didn't fix some redlines I had done and said  
13 he did and sent it out for permit and they started building  
14 it and we couldn't build that roof. So, I had to fix it.

14:46 15 Q. Let's talk about the Preston Wood & Associates plans  
16 generally.

17 Do you know how many times one of Urban  
18 Living's builder clients hired Cameron Architects to revise  
19 one of those plans?

14:47 20 A. Oh. There were well over 50 projects. Hundred.

21 Q. Hundred different units, you mean, or...?

22 A. Hundred different lots. Or maybe even it was 200 lots.  
23 Some of them were pretty big developments.

24 Q. Okay. Did the PWA plans have characteristic problems,  
14:47 25 meaning a problem that you would run into over and over and



*S. Cameron - Direct by Mr. Strother*

1 over again?

2 A. There was always something -- an AC chase or a stair --  
3 but, you know....

4 Q. The way you answered the question, I think maybe, no,  
14:47 5 there wasn't a characteristic problem.

6 A. Well, they were all right.

7 Q. Okay.

8 A. I mean, every time I go back into one of my plans I find  
9 a problem. There's always something you miss, but not  
14:47 10 inherent.

11 Q. All right. Let me direct your attention to Nagle.

12 And why don't I begin by asking you about the  
13 e-mail we've seen from Fina Reisinger to Ms. Wood.

14 MR. STROTHER: Your Honor, may I have the overhead  
14:48 15 projector? Thank you.

16 By Mr. Strother:

17 Q. Okay. I want to call your attention to the part of the  
18 sentence that begins with "Stephen..."

19 "Stephen realized there were some major issues  
14:48 20 with the stairs..."

21 First of all, was that correct?

22 A. Yes.

23 Q. "...and ended up having to draw a plan from scratch..."

24 Was that correct?

14:49 25 A. Not entirely.

*S. Cameron - Direct by Mr. Strother*

1 Q. "...so, we didn't even use this plan."

2 Was that correct?

3 A. No.

4 Q. Okay. Let me ask you: What was your participation in  
14:49 5 that chain of communication, meaning did you ever speak with  
6 either Fina Reisinger or Mr. Ramani or -- Down at the bottom  
7 I think it says: "Please coordinate accordingly with Mai."

8 Did you speak to any of those people about the  
9 Nagle problem?

14:49 10 A. I'm sure I talked to Fina. That's kind of who I was  
11 doing most of my communication with.

12 Q. How did you know that there were major issues with the  
13 stairs?

14 A. It didn't start with the stairs. It's just, when I  
14:49 15 get -- when I get -- I got a thing -- I think they called it  
16 a "land package", and that would have the site plan and a  
17 lot of paperwork. It would have the site plan where they  
18 were going to divide up, and that's how we figured out what  
19 footprint we need. And they also send the DWGs.

14:50 20 Q. What are the DWGs?

21 A. Those are the drawing files, the files from PWA.

22 When I had the first meeting with the new  
23 builder, I realized --

24 Q. Pardon me. Who would send you the DWGs?

14:50 25 A. Fina.

S. Cameron - Direct by Mr. Strother

1 Q. Okay. Thank you.

2 A. You know, they'd been working on getting these deals,  
3 and then I'm basically a drafter for this stuff.

4 And when I first met with the owner, I  
14:50 5 realized that the plans that they had picked didn't work. I  
6 mean, they were just -- Nothing wrong with them. They just  
7 didn't work because of the layout.

8 You know, I needed the living room and the  
9 master in the front. I mean, everybody was seeing it a  
14:51 10 bunch of times. But I had to get that fixed. And as we go  
11 through and redesign it and get things working, we figured  
12 out the stairs didn't work and had to move the utility,  
13 which changed other things.

14 Q. So, let me slow this down.

14:51 15 You said you met with the owner. Is that the  
16 builder?

17 A. Probably.

18 Q. Okay.

19 A. I mean, sometimes they're developers, builders.  
14:51 20 Sometimes -- I don't usually have much contact. I'd usually  
21 have the one meeting at Urban Living and we'd go from there.

22 Q. And then the next thing you said is you had to make  
23 changes to move the living room and things that the jury has  
24 seen.

14:51 25 Break that down for me. Who determined that

*S. Cameron - Direct by Mr. Strother*

1 changes needed to be made of that kind?

2 A. Me. Well, I mean, it was just logical.

3 Q. Then who made the changes?

4 A. Probably Keith or Chad. One of them was working on it.

14:52 5 Q. And then you said the stair problem was discovered.

6 Right? Who discovered that?

7 A. Probably whoever was working on it.

8 Q. Either Keith or Chad?

9 A. Yeah. Yeah.

14:52 10 Q. And did they consult you, Keith or Chad about how to fix  
11 the stair problem?

12 A. Yes.

13 Q. What was the solution?

14 A. Well, it was already being, I mean, pretty much redrawn.

14:52 15 Q. Did you instruct your employees to redraw?

16 A. Yes. Yes. They -- Yes.

17 Q. So, what happened next?

18 A. Well, it was supposed to be a new plan. You know, I  
19 told Keith "new plan", which means not JPW stuff. Cameron  
14:53 20 Architect's stuff -- menu, blocks, all of that.

21 Q. Why did you want to start over at that point?

22 A. It was just -- It had made so many changes that it was  
23 just a new plan. I mean, there wasn't much going to work.

24 Q. Was that before or after the changes were made due to  
14:53 25 the stair problem?

*S. Cameron - Direct by Mr. Strother*

1 A. Well, this was after.

2 Q. Okay.

3 A. And I didn't think about it. So, we -- You know, they  
4 made all the changes and coming back and... So, when it  
14:53 5 came back for redlines, I mean, I was -- I mean, that's all  
6 I did. I'd go redline all day.

7 Q. What does "redlining" mean?

8 A. Just taking the plans, printing them out and checking  
9 them.

14:54 10 Q. With a red pen?

11 A. Yeah.

12 THE COURT: "Red pen" meaning you want them out or  
13 that you've already checked them or what?

14 THE WITNESS: No. I'm writing on them, just making  
14:54 15 sure the guys didn't miss code violations so you can get a  
16 permit.

17 By Mr. Strother:

18 Q. And you're saying that you were having to write all over  
19 them with red ink?

14:54 20 A. Yes. Well, yes.

21 And, you know, I was getting quite irritated  
22 with Keith because I had to keep redlining his stuff again  
23 and again and he wasn't really following directions very  
24 well. He didn't make it long after that.

14:54 25 Q. Let's go back to the e-mail on the screen behind you.

*S. Cameron - Direct by Mr. Strother*

1                   So, you spoke with Fina about the plans having  
2 problems in them?

3       A. Uh-huh. Yes.

4       Q. Why did you bring it to her attention, meaning why did  
14:54 5 it matter to you that you were going to have to start over  
6 with a new set of plans?

7       A. Well, I didn't feel that we'd pay for the stock plans if  
8 I wasn't going to use it.

9       Q. Okay. So, they weren't redrawn from scratch,  
14:55 10 ultimately. Right?

11      A. Right.

12      Q. Why did you send them on to -- Where did you send them  
13 on after they were finished?

14      A. Well, once they're finished, they go to the permit  
14:55 15 runner -- or the engineer is the next step. Engineer. Then  
16 permits. So -- And I probably didn't even notice. I mean,  
17 we were -- I've never been that busy before.

18      Q. So, this was in May of 2014.

19                   How busy was Cameron Architects at that point?

14:55 20      A. Well, I mean, we had at any given time probably, what,  
21 15, 16 projects with Urban Living, and then I had my own  
22 business that was still cranking.

23      Q. So, what were you doing at the time not related to  
24 revising PWA plans? What was Cameron Architects also  
14:56 25 working on?

*S. Cameron - Cross by Mr. Bonham*

1 A. Well, just other projects. I mean, I had other builders  
2 and other developers. I think back then I had a couple  
3 restaurants, also. Yeah. Wife.

4 Q. Did, you after this lawsuit was filed, compare the plans  
14:56 5 that ultimately came out of your office with the original  
6 PWA plan?

7 A. Yes.

8 Q. I was going to have you look at a document. Then I  
9 changed my mind.

14:57 10 Do you believe that your office changed that  
11 plan enough to where it's no longer the same plan?

12 A. That's my belief. Yes.

13 Q. Mr. Cameron, thank you.

14 MR. STROTHER: I pass the witness.

14:57 15 THE COURT: Are you going to need the lights out?

16 MR. BONHAM: I may, but we'll see with it on.

17 THE COURT: All right. Let me know if you need it.

18 MR. BONHAM: I will, Your Honor. Thank you.

19 CROSS-EXAMINATION

14:57 20 By Mr. Bonham:

21 Q. Mr. Cameron, I believe you told Mr. Strother that you  
22 have -- you've designed thousands of townhouses.

23 A. Probably.

24 Q. Are they all alike?

14:57 25 A. There's probably -- There's a lot of differences, but

*S. Cameron - Cross by Mr. Bonham*

1 they all have the same rooms, same setup.

2 Q. Your townhouses, you think they're all alike?

3 A. Yeah.

4 Q. Now, you mentioned Scott Harris.

14:58 5 A. Yes.

6 Q. He's been your friend since college?

7 A. Yes.

8 Q. And he's the one you say now came into your office to  
9 help you with the Preston Wood AutoCAD system?

14:58 10 A. The menu system.

11 Q. Correct.

12 A. Yes.

13 Q. And that was after the contract between Preston Wood &  
14 Associates and Urban Living was executed. Right?

14:58 15 A. Yes. Pretty sure.

16 Q. Okay. Is it your testimony that he was a PWA -- not  
17 working with Mr. Wood at Weekley? Is it your testimony  
18 under oath that he was a PWA employee at that time?

19 A. I'm not sure how to answer that because I don't know.

14:58 20 When -- I'm pretty sure they had moved by then, but I'm not  
21 100 percent sure.

22 Q. So, you don't know whether he was still a PWA employee  
23 or whether he was actually working for David Weekley and  
24 helping you out because he was your college friend?

14:59 25 A. No. He's the one that wrote the menu. He knew how to



*S. Cameron - Cross by Mr. Bonham*

1 set it up.

2 Q. No doubt that he knew how to do it.

3 But I think your testimony was that it was a  
4 PWA employee who came over during the time of this contract.

14:59 5 How do you know that?

6 A. I guess I don't.

7 Q. And I will try to save as much time as we can. But do  
8 you recall testifying in your deposition about what  
9 conversations you had with Preston Wood employees?

14:59 10 A. Uh-huh.

11 Q. And we talked about this at some length, didn't we?

12 A. Yes.

13 Q. And you didn't mention Scott Harris at all during that  
14 deposition, did you?

14:59 15 A. I don't know. I'm sure you'll look it up.

16 MR. BONHAM: Would you pull up deposition --

17 Page 23, Line 22 through 26:07.

18 And before we do that, if I could have the  
19 document camera, please.

15:00 20 By Mr. Bonham:

21 Q. I'm putting in front of you what was your answer to  
22 Interrogatory No. 6. And these are from the amended  
23 answers, interrogatories of Cameron Architects.

24 You see Interrogatory 6 where it indicates:

15:00 25 "Identify every communication that you or anyone acting on

*S. Cameron - Cross by Mr. Bonham*

1 your behalf had had with any past or present PWA employee  
2 since January 1, 2014, concerning any of the infringing  
3 products the PWA-Urban Living agreement described in  
4 Paragraph 44 of PWA's First Amended Complaint or this  
15:00 5 lawsuit."

6 And your response was: "It's Defendants'  
7 understanding that we seek post-litigation" --

8 THE COURT: Slow down, please.

9 MR. BONHAM: Sorry.

15:00 10 By Mr. Bonham:

11 Q. Well, you can see your answer.

12 Did you, in your answer, say anything about  
13 Scott Harris?

14 A. I did not.

15:01 15 MR. STROTHER: Your Honor, I object to improper  
16 impeachment. That question doesn't even ask for that  
17 conversation.

18 MR. BONHAM: It concerns the PWA-Urban Living  
19 agreement. He's saying, after that agreement, PWA sent an  
15:01 20 employee over to show him how to use the AutoCAD system.

21 MR. STROTHER: That's a stretch. I still object as  
22 irrelevant.

23 THE COURT: Overruled.

24 By Mr. Bonham:

15:01 25 Q. You don't mention Scott Harris, do you?

*S. Cameron - Cross by Mr. Bonham*

1 A. No.

2 MR. BONHAM: Your Honor, if we could have the front  
3 computer connection.

4 THE COURT: What do you want? Do you want your  
15:01 5 computer?

6 MR. BONHAM: Tell you what. I'll do it old-school.

7 THE COURT: Hold it a second.

8 (Off-the-record discussion)

9 THE COURT: Do you want to go back to the overhead?

15:02 10 MR. BONHAM: Sure. Let's just try and do it  
11 quickly.

12 By Mr. Bonham:

13 Q. This is Page 23 of your deposition.

14 And I indicated to you: "Okay. I'd like to  
15:02 15 direct your attention to Interrogatory No. 6. It's on the  
16 next-to-the last page. Okay?"

17 And you see your answer to Interrogatory  
18 No. 6.

19 And your answer was: "Yes."

15:02 20 And I said: "Okay. Is that true and  
21 correct?"

22 You said: "One more time, yes."

23 I said: "Okay. You didn't include the  
24 discussions you had had with Samantha Wood that we just  
15:02 25 talked about, though, did you?"

*S. Cameron - Cross by Mr. Bonham*

1           You said: "No. Because that was -- that was  
2 before the thing -- before the first amended complaint or  
3 the lawsuit."

4           And I said: "Okay. So, again, the only  
15:02 5 communication you recall, looking at the second line, is  
6 Defendants recall having prelitigation communication with  
7 Samantha Wood" --

8           THE COURT: Slow down, please.

9           MR. BONHAM: -- "regarding the license agreement.  
15:03 10 During those communications, Samantha Wood represented that  
11 Plaintiff was going to file this lawsuit." Do you see that?

12           I said: "Was that communication -- that was  
13 right before the filing of the lawsuit?"

14           "Answer: Yes."

15:03 15           And then I said: "That's the only  
16 communication that you've identified in response to  
17 Interrogatory No. 6. Correct?"

18           You said: "The only communication about the  
19 lawsuit."

15:03 20           And then I went on. "Well, doesn't that  
21 interrogatory talk about identify every communication that  
22 you or anyone acting on your behalf had had with any past or  
23 present PWA employees since January 1, 2014, regarding or  
24 concerning any of the infringing products of the PWA-Urban  
15:03 25 Living agreement described in Paragraph 44 or this lawsuit?

S. Cameron - Cross by Mr. Bonham

1 Isn't that what it says?"

2 You said: "Yes" -- or "Uh-huh."

3 And I said: "And the only one that you  
4 identified was this pre-litigation communication with

15:04 5 Samantha Wood regarding the license agreement."

6 We'll skip down to 26.

7 I said: "Okay. Well, did you have any  
8 communications with anyone at Preston Wood & Associates  
9 regarding the PWA-Urban Living agreement that's defined in  
10 Paragraph 44 of the second or third amended petition?"

15:04 10

11 And your answer was "No," wasn't it?

12 A. Yes.

13 Q. You've indicated that you've done over 50 projects using  
14 PWA stock plans?

15:04 15 A. I believe that's right.

16 Q. And you have the CAD files for all 50 of those projects.  
17 Right?

18 A. If they were sent.

19 Q. Going back to PX-103 -- I don't think we need to bring  
20 it up -- you were cc'd on that e-mail, weren't you?

15:05 20

21 A. PX what?

22 Q. Exhibit --

23 MR. BONHAM: Bring up 103, please.

24 Your Honor, we need -- Try again. There we  
25 go.

15:05

*S. Cameron - Redirect by Mr. Strother*

1 THE WITNESS: There it goes.

2 By Mr. Bonham:

3 Q. Doesn't that show you were cc'd on that document?

4 A. Yes.

15:05 5 Q. All right. One last question, Mr. Cameron.

6 You said that your -- in your opinion, your  
7 revisions to the Nagle plan made it a new plan?

8 A. Yes.

9 MR. BONHAM: Bring it up.

15:05 10 Q. You're saying that's a new plan?

11 A. That's an elevation.

12 Q. Same elevation, though. Right?

13 A. Yeah.

14 Q. The one you copied from their CAD files. Correct?

15:06 15 A. From the file. Yes.

16 Q. But you think that's a new plan?

17 A. The plan is new.

18 MR. BONHAM: Pass the witness.

19 MR. STROTHER: I do have some redirect, Your Honor.

15:06 20 THE COURT: Yes, sir.

21 REDIRECT EXAMINATION

22 By Mr. Strother:

23 Q. Mr. Cameron, when Scott came over to Cameron Architects'  
24 office to install the AutoCAD menu, did you have a

15:06 25 conversation with him about the UL-PWA licensing agreement?

*S. Cameron - Redirect by Mr. Strother*

1 A. No.

2 MR. BONHAM: Objection, Your Honor. Hearsay.

3 THE COURT: Say that again.

4 MR. BONHAM: Hearsay. He's asking what he -- Okay.

15:06 5 THE COURT: Ask your question again.

6 MR. STROTHER: Did he have a conversation with  
7 Scott about the UL-PWA agreement?

8 THE COURT: Overruled.

9 That was: Did you have a conversation?

15:07 10 THE WITNESS: No.

11 By Mr. Strother:

12 Q. When did you learn about the UL-PWA licensing agreement?

13 A. I'm not sure.

14 Q. Here's a good question. Did Miss Wood send Scott over  
15:07 15 to your office to make that installation?

16 MR. BONHAM: Objection, Your Honor. How is he  
17 going to know that?

18 MR. STROTHER: Because he might have talked --

19 THE COURT: Hold it a second.

15:07 20 Do you want to take him on voir dire?

21 MR. BONHAM: Sure.

22 THE COURT: This is a procedure -- He can now ask a  
23 couple of questions as a follow-up -- or as a precursor to  
24 that question.

15:07 25

*S. Cameron - Redirect by Mr. Strother*

1 VOIR DIRE EXAMINATION

2 By Mr. Bonham:

3 Q. You said you didn't know whether or not Scott Harris was  
4 even working for PWA at the time. Right?

15:07 5 A. I don't know when the dates -- when Preston made the  
6 move to David Weekley versus when we started the file  
7 system.

8 Q. All right.

9 A. I don't know.

15:07 10 MR. BONHAM: Okay. Go ahead.

11 REDIRECT EXAMINATION CONTINUED

12 By Mr. Strother:

13 Q. Who sent Scott over to your office?

14 A. I don't know.

15:08 15 Q. What was the first conversation you had with Miss Wood  
16 about PWA plans coming over to Cameron Architect's office?

17 A. First conversation?

18 Q. Correct.

19 Did it happen before PWA plans came over to  
15:08 20 Cameron Architect's office?

21 A. I don't think so.

22 Q. Okay. Let me show you your deposition because

23 Mr. Bonham -- I don't know if you remember. He was showing  
24 your --

15:08 25 MR. STROTHER: May I use the overhead, Your Honor?



*S. Cameron - Redirect by Mr. Strother*

1 By Mr. Strother:

2 Q. He was showing the jury that you are an untruthful  
3 person and he said, 'Let's just skip over this and go down  
4 here.' And I'd like to read for the jury the part that he  
15:08 5 skipped.

6 The question was: "And the only one you  
7 identified was this pre-litigation communication with  
8 Samantha Wood regarding the licensing agreement?"

9 And your answer was: "Maybe I don't  
15:09 10 understand. I had talked -- I had communications with them,  
11 talking about plans and ordering files, but nothing about  
12 the litigation."

13 What does that answer mean? What are you  
14 saying right there?

15:09 15 A. Well, I mean, I'd talked to them before.

16 Q. You had conversations with Miss Wood and other people at  
17 PWA about the plans and about ordering files?

18 A. Yes.

19 Q. Before the lawsuit was filed?

15:09 20 A. Oh, yeah.

21 Q. How many times did you speak to them?

22 A. Not too many.

23 Q. Did you speak to them on every plan?

24 A. Four or five. No.

15:09 25 Q. I'm sorry. I didn't hear your answer.

*Ramani - Direct by Mr. Strother*

1 A. Four or five, maybe.

2 MR. STROTHER: I pass the witness.

3 MR. BONHAM: Nothing further.

4 THE COURT: Thank you, sir. You may step down.

15:09 5 Call your next witness.

6 MR. STROTHER: Your Honor, Defendants call Vinod  
7 Ramani to the stand, please.

8 THE COURT: Do you want to come forward, sir.

9 MR. STROTHER: And, Your Honor, I'll be using my  
15:10 10 laptop during most of this.

11 THE COURT: Raise your right hand to be sworn.

12 **VINOD KEWALRAMANI, DEFENDANT, SWORN**

13 THE COURT: Thank you, sir. Have a seat.

14 DIRECT EXAMINATION

15:10 15 By Mr. Strother:

16 Q. Mr. Ramani, would you please introduce yourself to the  
17 jury.

18 A. My name is Vinod Kewalramani, but I also go by "Vinod  
19 Ramani".

15:10 20 Q. Is "Ramani" a legal last name or just a name that you're  
21 known by?

22 A. Just known by a shortened version of Kewalramani?

23 Q. Do you prefer "Mr. Ramani"? I may call you -- I'll call  
24 you "Mr. Ramani". Do you prefer "Mr. Ramani"?

15:10 25 A. Just "Vinod", please.

*Ramani - Direct by Mr. Strother*

1 Q. In court, it will be "Mr. Ramani".

2 A. All right.

3 THE COURT: Let's go.

4 MR. STROTHER: Yes, sir.

15:10 5 By Mr. Strother:

6 Q. Okay. Tell me about your business background. When did  
7 you first get into real estate?

8 A. In -- I --

9 THE COURT: Pull that mic in a little bit.

15:10 10 THE WITNESS: Sorry, Your Honor.

11 THE COURT: That's fine.

12 By the way, the chair doesn't pull forward.

13 So, if you want to lean back, pull the microphone in and get  
14 more comfortable.

15:11 15 THE WITNESS: Okay, Your Honor. Thank you.

16 I started doing research on real estate back  
17 in 1998 and entered into it in -- end of '98, '99.

18 By Mr. Strother:

19 Q. What were you doing before real estate?

15:11 20 A. I owned a business called Global. We sold what they  
21 call FF&E -- furniture, fixtures and equipment -- to hotel  
22 chains and retail chains across the country -- Discount  
23 Tires, Hampton Inn, Best Western. It was doing all the  
24 interior design finishes for those chains.

15:11 25 Q. You may be on the cuff of talking a little too quickly.

*Ramani - Direct by Mr. Strother*

1 A. Oh. Sorry.

2 Q. So, back to real estate, you said you began researching  
3 in 1998. Right?

4 THE COURT: Began in real estate about 1998, early  
15:11 5 '99. Correct?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: All right. Go on.

8 Q. What did you begin doing?

9 A. Originally, I was going to enter into development,  
15:11 10 looking for different sites, seeing where there was a need  
11 for different type of urban townhome or single-family patio  
12 home type of product in the inner city market.

13 Q. Did your experience in selling the FF&E to your  
14 customers back then give you any insight into real estate?

15:12 15 A. I think so. I mean, we were involved in, you know, some  
16 design aesthetics, helping find the locations for some of  
17 the hotels.

18 So, I think that expertise and level of  
19 marketing and -- We were doing a substantial -- We were  
15:12 20 doing almost 20, 30 hotels, which averaged, you know,  
21 800,000 to a million dollars a package.

22 So, there was a lot of coordination and  
23 marketing and, also, finding and helping them find the real  
24 estate and the product that would go inside those hotels.  
15:12 25 It was a critical part of our business at Global, and it

*Ramani - Direct by Mr. Strother*

1 helped me in Urban Living, also.

2 Q. So, if you wanted to get into development, how did you  
3 end up, instead, in real estate sales?

4 A. When I actually went out to look for a home, I lived out  
15:13 5 in Fairfield, which is in Cypress, and I wanted to move back  
6 inside to the city or move into the city.

7 And as I started calling realtors to try to  
8 get help from them, I felt that I wasn't getting the service  
9 or level of service -- I'm sorry. I hope nobody's a realtor  
15:13 10 out there, but there's a lot of people in our industry that  
11 aren't full-time realtors in this business.

12 And I don't -- I felt that they were lacking  
13 the service. I called one on a weekend and, I mean, they  
14 never called me back or they wouldn't show or open the  
15:13 15 doors. And I was looking for new construction homes at that  
16 time.

17 So, I felt there was a disconnect between the  
18 developers and the realtors and the level of service in  
19 marketing that they deserve to earn the commission.

15:13 20 Q. So, you saw a market opportunity?

21 A. I did. Yes.

22 Q. Is that when you formed Urban Living?

23 A. Yes.

24 Q. Do you know what year that was?

15:14 25 A. I think we incorporated in '99. I don't have the exact

*Ramani - Direct by Mr. Strother*

1 date, but somewhere between '99 to 2000.

2 Q. So, what did Urban Living set out to do or do  
3 differently?

4 A. I think our number one difference or goal or mission  
15:14 5 statement was to actually provide a level of service to the  
6 seller, to the buyer, where they would feel that we added  
7 value to be able to earn that commission and not just hand  
8 us a check for 3 percent or 6 percent by just putting a sign  
9 up and writing a contract up.

15:14 10 I felt there was a whole other level of  
11 services that you needed to bring to the table to earn that  
12 commission.

13 Q. So, with regard to the 3 or 6 percent commission, did  
14 you set out to have Urban Living do something differently?

15:14 15 A. We did. The first thing we did is we felt it was  
16 important that there was actually a sort of retail showroom  
17 that you could come to.

18 My approach was sort of to look at it as if  
19 you were going to buy a car, that you could actually go  
15:15 20 visit the showroom, look at the car, do your research, meet  
21 somebody in finance. I don't think a lot of dealerships  
22 have insurance companies in there.

23 But what we wanted to do is have a place where  
24 the consumer or buyer and the builder could meet in the  
15:15 25 showroom and do all of the pieces of the transaction under

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1 one roof.

2 Q. Did Urban Living ultimately do that?

3 A. We did. Yes.

4 Q. When did Urban Living move into its office on  
15:15 5 Washington?

6 A. I think it was in 2000.

7 Q. Has Urban Living changed over time since 2000?

8 A. We're always evolving. I think that's important. One  
9 of the things I always try to tell our employees is one of

15:15 10 the key things that I think that keeps us in business is

11 it's important to differentiate yourself and keep

12 reinventing yourself and keep pushing and offering more

13 services to the buyers and the sellers. So, yes.

14 Q. Does Urban Living have any kind of focus with regard to  
15:16 15 the real estate it sells?

16 A. I mean, I'd say almost 99 percent of our business is --

17 Maybe even 100 percent of it. The majority of it's all

18 inside the loop, in the inner city market -- townhomes,

19 patio homes and single-family homes in the inner city

15:16 20 market; hence, the name "Urban" Living.

21 Q. Do you believe that there are now imitators out there?

22 A. Definitely.

23 Q. Does that bug you?

24 A. No. I mean, it's free trade, you know, in the U.S.,

15:16 25 which makes it one of the, I think, great entrepreneurial

*Ramani - Direct by Mr. Strother*

1 countries in the world, and it gives you the ability to have  
2 people. And sometimes it's flattering.

3 I mean, can it be irritating sometimes? Yes.

4 But the majority of the time, no. I'm okay with it. It

15:17 5 helps you become a better businessman and you have to excel  
6 and be better at what you do.

7 Q. Do you think Urban Living leads in any areas in the  
8 market?

9 A. I mean, we sell, I'd say, anywhere from 40 to 50 percent  
15:17 10 of the new construction product. At one time, it was  
11 60, 70 percent because -- But because of other people coming  
12 into the business field it's dropped a little bit. But we  
13 lead in the high-density townhome, patio home product.

14 Q. I'd like to go over how a property is sold briefly.

15:17 15 A. Okay.

16 Q. And then I want to move into what we've called "UPM".

17 A. Okay.

18 Q. So, tell the jury how the transaction takes place. How  
19 does a customer of yours come in and list property for sale?

15:17 20 A. So, we're going to focus on the developer side because  
21 you're saying "list".

22 We do do resales. So, when we classify -- You  
23 know, a resale is as if you had a home and you wanted to  
24 sell it. But I'm going to focus on what the majority of our  
15:18 25 business is, and that's the developer side of it.



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1 And we will help the developer acquire the  
2 site, recommend what should be built on the site, what  
3 finishes, what the -- you know, they were talking about  
4 contemporary Mediterranean -- what style would be best  
15:18 5 suited for that maybe neighborhood or the product mix that's  
6 needed or the consumer demand, price point, and then, you  
7 know, do the market analysis on what it will sell for for  
8 that price.

9 And then we are very aggressive in the sense  
15:18 10 of the marketing side of it. We do all the graphics, the  
11 logos, the web development, anything to do with that sales  
12 side of it, I mean, down to ordering the balloons, to the  
13 rugs that might go in the front, you know, with their logo.  
14 We will help them with all of that.

15:19 15 Q. Are you describing the normal Urban Living listing  
16 agreement or are you describing UPM right now?

17 A. Urban Living.

18 Q. Okay. So, tell me how UPM differs. That's Urban  
19 Project Management.

15:19 20 A. So, do you want me to talk about how that was created or  
21 why or...?

22 Q. Absolutely.

23 A. So, we have nothing to do with actually partnering up  
24 with the architect. "UPM", first of all, is "Urban Project  
15:19 25 Management".

*Ramani - Direct by Mr. Strother*

1 And because my background was sort of managing  
2 these retail and hotels and bringing all the vendors  
3 together for them and then earning, you know, sales for  
4 other -- mattress or whatever, I wanted to sort of take the  
15:19 5 same approach.

6 We were somewhat forced into that not in a bad  
7 way, but, I mean, I'm going to tell both of them, in front  
8 of you, I have a great deal of respect for Preston and Sam  
9 and I still do today.

15:20 10 They were friends of ours. My wife and I -- I  
11 wanted to go to dinner with them multiple times. I mean, I  
12 think they're beautiful people and this is a  
13 misunderstanding.

14 But what ended up happening is they sold their  
15:20 15 business to David Weekley. And I think they mentioned --

16 THE COURT: You "think" they sold their business to  
17 Weekley?

18 THE WITNESS: Well, I know they sold their  
19 business.

15:20 20 THE COURT: All right.

21 A. So, before that, for years and years and years, a  
22 majority of what we would do, to save time and because they  
23 had some great stock plans and we had a good relationship  
24 with them, is I would say, unless the builder had another  
15:20 25 relationship, our go-to was Preston Wood.

*Ramani - Direct by Mr. Strother*

1 Out of five days a week, sometimes I would be  
2 in their office two, three times a week with developers,  
3 meeting with them or they would come to our office.

4 This is pre-UPM. So, I don't know the exact  
15:21 5 amount, but I would think there was millions of dollars of  
6 business sent to them.

7 Q. And when you said you would meet with them that included  
8 Mr. Wood?

9 A. Yes.

15:21 10 Q. Okay.

11 A. He was an integral part and did the, you know, designs  
12 and would help us pick the plans, and we'd work together as  
13 a team, and Sam.

14 And I can't remember. There was one other key  
15:21 15 employee that was always with them. I think she's at  
16 Weekley now. I apologize. I can't remember her name.

17 But it was a very good partnership. We didn't  
18 earn any money from them. We didn't get any kickback or  
19 referral. It was based on relationship.

15:21 20 And we had a pipeline -- You have to  
21 understand, when we would go and help -- There was a  
22 developer and a builder. Right?

23 So, a developer, I just want you to  
24 understand, could be a banker or could be an attorney, just  
15:21 25 somebody wanting to get into the business.

*Ramani - Direct by Mr. Strother*

1                   And we dealt with a lot of new people wanting  
2                   to enter into the business that didn't have the knowledge.  
3                   So, our job was to take them from beginning to end -- and  
4                   that's really what we specialized in -- so they felt that we  
15:21 5                   added value to earn the commission.

6                   So, a lot of times it was, you know, the same  
7                   thing, partnership with Preston, but we didn't earn the  
8                   money.

9                   But when they decided to sell the business, I  
15:22 10                  had given my word to a lot of these developers -- and it  
11                  also affected our business to a certain degree because it  
12                  was a pipeline business and we had to keep -- It's sort of  
13                  like a factory. I mean, if everything stops and the machine  
14                  breaks down, I mean, we don't earn our commissions.

15:22 15                 So, we have to find a solution to pick up when  
16                 they decided to sell the business. And, again, I'm not --  
17                 It's America. You sell your company. You make money. And  
18                 if there's a better opportunity, that's fine. But it's my  
19                 job and responsibility to take care of the developers and  
15:22 20                 the people that I referred them to.

21                 And, so, at that point, you know, Preston was  
22                 entering into Weekley. We talked a little bit and then I  
23                 was turned over to Sam, which we had a relationship with,  
24                 also, and we started trying to come up with a solution that  
15:23 25                 would be amicable --

*Ramani - Direct by Mr. Strother*

1 MR. ZUMMO: Objection, Your Honor. This has turned  
2 into a narrative.

3 THE COURT: Sustained. Question and answer,  
4 please.

15:23 5 THE WITNESS: Sorry.

6 MR. STROTHER: Yes, Your Honor.

7 By Mr. Strother:

8 Q. I have a question on my mind that is part of what you're  
9 talking about. And I'm going to lead you -- I'm not going  
10 to lead you. I'm going to ask you some questions.

11 A. Okay.

12 Q. In these meetings, when Mr. Wood was still with the  
13 company and you had a builder or developer, Mr. Wood, maybe  
14 Miss Wood and you, what sort of things were being discussed?

15:23 15 A. What product mix would be on there, what the site -- A  
16 lot of times we would actually do the site plan -- Or,  
17 actually, at the beginning, we didn't have anybody; so, they  
18 would actually do that.

19 But I would say, "Hey. Look. I think here  
15:23 20 would be ideal for Mediterranean, 2,000 square feet." The  
21 price point is going to drive everything.

22 You know, we first start with location, what  
23 the cost of that land is going to be, which then will equal  
24 what the sales price or what that market demand is in that  
15:24 25 marketplace.

*Ramani - Direct by Mr. Strother*

1 Q. In those meetings, who was the person that was bringing  
2 to the table knowledge about what the actual customer  
3 wanted, the homebuyer?

4 A. We would. That was me.

15:24 5 Q. How --

6 A. We would actually send them -- I think somebody  
7 mentioned earlier -- Cameron or somebody -- the land kits.  
8 I was really big on, when you find the site -- You know, you  
9 can go to HCAD. You have the size of the lot.

15:24 10 We would put a kit together and it would say:  
11 Okay. Based on this lot, this is the price point. This is  
12 the square footage of the product. This is what we think  
13 should go there.

14 And we would send that to them so it would,  
15:24 15 again, sort of compress the time so then the builder and us  
16 would not be going in there -- and they could do some of  
17 their due diligence, pull their stock plans, and say, "Okay.  
18 You guys said 2,000 square feet, Mediterranean. Here's two,  
19 three versions."

15:24 20 And then I would go to their office and say,  
21 "Look. Let's" -- you heard the word "redline" -- "Let's  
22 redline these plans. Let's add a roof deck."

23 And it was a joint deal. I mean, it wasn't  
24 all my input. I'd say the majority of it was, but then they  
15:25 25 added their value as their designer and their team and what

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1 expertise they brought to the table.

2 Q. So, I think that a moment ago you were talking about how  
3 UPM started and how that was related to Mr. Wood's departure  
4 from PWA.

15:25 5 A. Correct.

6 Q. Why did UPM start at that point?

7 A. I had to deliver on my word on what I told these  
8 developers and, also, had the product mix for our business  
9 to be able to sell the homes.

15:25 10 Q. How did the arrangement first come up, the possibility  
11 of Urban Living paying Preston Wood & Associates \$250 per  
12 use of plan?

13 A. Sam and I negotiated that. We went back and forth. The  
14 number was originally a little higher, I think 500 or 700.

15:26 15 Don't hold me to the exact number.

16 And it was just something we both discussed  
17 that would be a reoccurring deal. We would work with them  
18 and sort of build some volume up and I think -- You know,  
19 they have the stock plans. We have the clients.

15:26 20 We didn't want to burn the bridge with the  
21 developers. I don't think she wanted to either. And we  
22 wanted to get the product -- when I say "product", the  
23 homes -- built and delivered, and it was...

24 That's how we arrived at that.

15:26 25 Q. So, before that agreement, while Mr. Wood was still at

*Ramani - Direct by Mr. Strother*

1 PWA, how did the process work when there needed to be  
2 revisions to those stock plans?

3 A. They have the staff to do that.

4 Q. I take it that they would charge more in that situation.

15:26 5 A. I think on their contracts they had a revision line or  
6 custom line if they had to do work to them, yes. I think it  
7 was by hour.

8 Q. At the time that the license agreement was entered into,  
9 did PWA have the ability to revise the plans?

15:27 10 A. I don't know exactly what the language reads. I would  
11 think "yes". If they were their plans, they could revise  
12 them. But I don't think they had the support staff to do  
13 that. That's why we had to go out and partner up with these  
14 other architects to actually do that.

15:27 15 Q. And one of the architects is Mr. Cameron, Cameron  
16 Architects?

17 A. Correct.

18 Q. How did Mr. Cameron -- How did Cameron Architects come  
19 into the mix?

15:27 20 A. I think, as you mentioned before, he had done some  
21 commercial work for us and, also, I knew that he had done  
22 intense -- a good amount of residential work.

23 I know in Bellaire and West U he had done some  
24 single-family homes and some townhomes and he had performed  
15:27 25 fairly well on the commercial side of things and there was a



*Ramani - Direct by Mr. Strother*

1 few of our other developers that were actually going  
2 directly to him before, like we even knew Stephen.

3 I had seen his name on some of the townhome  
4 products that he had completed. And they did fairly well.

15:28 5 So, I thought there might be an opportunity because he  
6 really focused more on the single-family.

7 I didn't think he would be competing directly  
8 with us in the sense of the new business model that we  
9 worked out with PWA. I mean, I know he had a good selection  
15:28 10 of plans, but I didn't want any overlap or conflict with the  
11 architect that was already doing a lot of business with  
12 developers in townhomes. So, I felt that it would be a good  
13 opportunity to partnership with him to let him do that work.

14 Q. You've used the word "partnership" a few times and it's  
15:28 15 appeared on a few of the documents.

16 Did you -- Did Urban Living and Cameron  
17 Architects have a partnership?

18 A. It wasn't a legal partnership. I mean, I enjoy doing  
19 marketing. And I want to clarify that. I don't think he  
15:28 20 clearly told you on that and it made him look -- Those  
21 contracts were performed -- Or let me rephrase that.

22 Those contracts were written in our office.  
23 Fina, the saleslady, and UPM actually produced those  
24 contracts. They were sent to him, but we did all the work.

15:29 25 And, actually -- and I'm pretty sure, because

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1 their attorneys wanted to review some of our contracts and  
2 make sure that addendums and things were there, that those  
3 were also sent to Sam and their attorney, because I think  
4 one of the things they wanted to definitely add to it was  
15:29 5 that addendum with that language in there regarding certain  
6 stipulations. So, we had to let them review it.

7 Now, was it specifically the Cameron one? No.  
8 Because we didn't only partner with Cameron. We had  
9 structural engineers. We had civil engineers. We had  
15:29 10 replatters; surveyors, which typically do the replatting;  
11 soil testing, asbestos testing.

12 And I think, if you look -- I don't know if  
13 they're in the exhibits, but every one of them said "in  
14 partnership with" because we wanted to promote their brand,  
15:29 15 also.

16 We didn't want to hide the people we were  
17 partnering up with. We felt it was important. We're a  
18 marketing company. We're not trying to hide PWA. We're not  
19 trying to hide Cameron. We want them to know there's a  
15:30 20 group of professional people that we're bringing together.

21 Q. Okay. So, tell me about the relationship with PWA when  
22 the license agreements began. How did the system work?

23 A. I mean, it's sort of spelled out. I mean, we would --  
24 Let me take you through the process.

15:30 25 Again, the first initial part of it is, you

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1 know, getting the developer and getting the land kit,  
2 finding the land, recommending what would go on that land.

3 But then we would take it a step further.  
4 Instead of now going to PWA's office, we were able to work  
15:30 5 with the stock plans.

6 We then hired -- At that time, we had Fina. I  
7 think we brought Toby on, which was one of their employees  
8 which had left -- again, don't hold me to the exact time --  
9 but maybe six months to a year before they had sold their  
15:30 10 business. And it might have been a shorter period. It  
11 could have been 60, 90. I don't know the exact date.

12 But she was very proficient in Chapter 42  
13 code, which is the site plan laying out what type of  
14 density, what you can put on that actual site.

15:31 15 So, we would base the site plans, block them  
16 out, again, because the code required -- or there's  
17 limitations. And I think Preston talked about that.

18 1600-square-foot lot. You know, you can use  
19 60 percent of it, 20-by-40 box. You know, on

15:31 20 5,000-square-foot unit, you can either put two units or  
21 three units. I won't bore you with all the technical stuff.

22 But we'd lay that out and then say, 'Okay.  
23 Based on this site plan layout, you can sell them for 320 or  
24 400,' whatever the number would be, depending on the  
15:31 25 different location. And then we would look at the stock

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1 plans from PWA and see in their library what would work best  
2 for that.

3 Then we would issue a purchase order to PWA --  
4 "purchase order" meaning, you know, 'Hey. We're ordering  
15:31 5 this here' -- and then we would put the information because  
6 they had specifically said, 'We want to know address, who  
7 the client is.' That was all put on there and then sent to  
8 them.

9 Then I think at the beginning we weren't  
15:32 10 supposed to get the DWG. I think what they wanted to do --  
11 And there could have been some back-and-forth on this.

12 The DWG was supposed to go directly to the  
13 partnering architect that was going to do it, and I think  
14 that --

15:32 15 THE COURT: Slow down a bit, please.

16 THE WITNESS: Sorry.

17 It sort of changed and then I think it started  
18 coming to Fina. Fina would manage that, then send it,  
19 because we ended up partnering because we were so busy in --

15:32 20 THE COURT REPORTER: Slower, please.

21 THE WITNESS: Sorry.

22 2014 was, by far, in my 20 years of doing  
23 this -- or 18, 19 years -- our busiest year. You know, oil  
24 I think was sitting at 90, 100, which our economy still is  
15:32 25 heavily dependent. A lot of people are moving here. So, we

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1 were fairly busy.

2           Toby would then lay that site plan out. Fina  
3 would then issue the purchase order. Fina would pick the  
4 partner that -- or the partners -- structural engineer,  
15:33 5 civil -- that we had a group of -- pool of people that we  
6 would work with that adequately could handle the business  
7 and not backlog it and then send them the request of,  
8 'Here's the land kit. Here's the plan. This is what we're  
9 doing. And we need to make all these changes to it.'

15:33 10           And we'd have, as Cameron said, an initial  
11 meeting with the developer or builder, typically, at our  
12 showroom and go through all the changes and requirements of  
13 that specific site.

14 Q. Would anyone from PWA come to that kind of meeting or  
15:33 15 were they out of the process?

16 A. Once we signed this license agreement, there was nobody  
17 from their staff or team that would come to those meetings  
18 at all. No.

19 Q. Did you keep -- Did UL, Urban Living, keep PWA up to  
15:33 20 date on what was being built?

21 A. We had to by issuing the purchase orders. So, they  
22 knew.

23 Q. Okay. What is the next step once the plans have been  
24 fully revised and they're ready to go?

15:34 25 A. I'm going to do a little bit more detail.

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1                   So, once the plans were finally approved from  
2     the developer, you know, they would come in. They would  
3     look at everything and say, 'Yes. We like these. The site  
4     plan looks good.'

15:34 5                   Then we would -- Typically, either -- they  
6     would hire a permit runner to go run them to the City to get  
7     the permit approved.

8                   Now, when you're saying "plan", I'm saying  
9     structural is done, civil is done, like the engineering part  
15:34 10    of it, architectural, plan layout. Everything is finished.

11                  You have a stack of things you have to submit  
12    to the City and then that permit runner would take them to  
13    the City to get approved. Now --

14    Q. So, is there more than just an architectural plan that  
15:35 15    has to go to the City before something can be built?

16    A. Correct.

17    Q. Okay.

18    A. Do you want me to go into --

19    Q. You named it. I heard structural and engineering.

15:35 20    A. I mean, there's wastewater letters. I won't bore you  
21    with this. There's a whole bunch of things that the City  
22    requires in order to get the permit.

23    Q. Okay. Does Urban Living ever directly build?

24    A. No.

15:35 25    Q. Do you have any ability to build within your company?

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1 A. Not the staff or the team to build, no.

2 Q. Let's talk about Nagle.

3 What was the fee -- I'm sorry. You heard my  
4 questions to Mr. Cameron.

15:35 5 Was the 22,000-dollar fee for 16 units or less  
6 or more?

7 A. For all 16 units.

8 Q. So, at 1,375 a unit, do you know how much of the builder  
9 amount was going toward those six units?

15:36 10 A. 1,375 times six.

11 Q. Okay.

12 A. I don't have a calculator in front of me. So, I  
13 apologize.

14 Q. How about 8,250?

15:36 15 A. Correct. If that's what you have on there, yes.

16 Q. I'm not going to put the e-mail back up again that has  
17 the "from scratch" on it.

18 A. Right.

19 Q. Do you think that that was an accurate e-mail?

15:36 20 A. No.

21 Q. What went wrong?

22 A. She shouldn't have -- We were -- And I remember some of  
23 this conversation. We were under the impression that it was  
24 being done from scratch. It wasn't. It's wrong. I take  
15:36 25 full responsibility for it. She shouldn't have written it

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1 that way.

2 And it's -- I knew the stairs were a problem.

3 I knew that they were being redrawn. But, apparently, there  
4 was a mistake made, and I take accountability for that.

15:37 5 It was done wrong. They copied some of those  
6 things on there. They did a lot of changes, but it was a  
7 mistake.

8 Q. When did you first find out that the PWA plan actually  
9 had been used in some form?

15:37 10 A. When Aviv, which worked for Oppidan, called me. And I  
11 think this was --

12 Q. Was Oppidan the builder?

13 A. Yes.

14 Q. Okay.

15:37 15 A. Sorry.

16 Oppidan -- They went by Oppidan -- I think  
17 "RDZ" was the initials of their company name. And he had  
18 called because the plans had been misplaced or stolen off  
19 the site.

15:37 20 The inspector came out there to check  
21 something. He called Sam and --

22 MR. ZUMMO: Objection, Your Honor. This has to be  
23 hearsay.

24 MR. STROTHER: That's true.

15:38 25 THE COURT: Okay. Rephrase it, then, or get around



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1 it.

2 By Mr. Strother:

3 Q. So, my question is trying to figure out when you  
4 learned.

15:38 5 A. I don't have an exact date, but I would think, if we  
6 looked at the plans and then went out a year -- Because, you  
7 know, it takes almost four to five months, six months, to  
8 build these.

9 Permit takes 60, 90 days to get, typically, if  
15:38 10 the City is working at full speed. So, I mean, usually, you  
11 can say from permit to about a year out. And that's  
12 probably when that happened.

13 Q. Did you try to contact PWA when you learned?

14 A. I think Sam called me. I don't "think". I know.  
15:38 15 Because she had asked me to come in and meet with her and  
16 her attorney. And, at that time, I said, "No."

17 I mean, look, if there's a mistake made -- I  
18 was told they were from scratch and, if they're not --  
19 That's when she mentioned, and I didn't know, that the  
15:39 20 copyright was still left on there.

21 And then we started looking into -- this is a  
22 big problem. And we offered to pay them the \$4,200, and  
23 they said, "No."

24 And, so, that was when I had first been  
15:39 25 notified.

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1 Q. How about Mount Vernon? Who, if you know, is the  
2 builder on Mount Vernon?

3 A. Rajesh Bindal.

4 Q. Okay. How did the -- Rewind.

15:39 5 The testimony we've heard, particularly from  
6 Mr. Cameron, is that he essentially duplicated a PWA plan to  
7 use for Mount Vernon.

8 Do you agree with that?

9 A. Yes.

15:39 10 Q. Do you know how that happened from Urban Living's  
11 perspective?

12 A. Yes.

13 Q. What happened?

14 A. Again, hindsight, now looking at everything, what had  
15:39 15 been happening is Fina sent him the land kit, said, "Use  
16 this plan." Everything was e-mailed to them and a purchase  
17 order was not issued to PWA. All right?

18 When -- Now, '15, '16 markets started  
19 imploding. Gas started dropping, I mean, if you look at the  
15:40 20 history, 34, 38. I'm telling you this so you understand why  
21 the project got put on hold.

22 Q. Before we get to the project being put on hold, I want  
23 to examine that mistake a little more.

24 A. Okay.

15:40 25 Q. Like I did with Mr. Cameron, you're not trying to not

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1 take responsibility for your employee, are you?

2 A. No. I mean, there was almost 40, 50 projects. Out of  
3 the 40, 50 projects, there's two. And there was much larger  
4 projects.

15:40 5 If somebody was -- I know they said there was  
6 a trust issue. Nobody was trying to steal from them. These  
7 are mistakes that were made. It was wrong, and I take full  
8 responsibility for it.

9 Q. Okay. So, you said that the product -- I cut you off  
15:40 10 when you said the project had been put on hold because of  
11 gas or oil going down.

12 A. Right. It slowed down tremendously in, I think, May or  
13 June of '15, '16. Things started really slowing down; and,  
14 so, a lot of our developers just stopped and put everything  
15:41 15 on hold.

16 Then, of course, this lawsuit came up -- was  
17 filed. They asked us -- actually, meaning, I guess,  
18 Plaintiff -- asked us -- Preston Wood and their attorneys --  
19 to go through and do a full audit.

15:41 20 And we wanted to, also, to see if, 'Look. Is  
21 there any issues on 30, 40, 50 or even any of the other  
22 projects that we weren't involved in.'

23 Q. Mr. Ramani, I am going to interrupt so that we don't get  
24 into issues outside of the case.

15:41 25 A. Okay. So, ask me the question again. I apologize.

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1 Q. Sure. Sure.

2 A. And I'll answer it directly. I don't want to cause any  
3 problems either.

4 Q. I have to replay in my head.

15:41 5 I was asking you about the project being put  
6 on hold.

7 A. Okay. Thank you.

8 So, yes, the project was put on hold. And I  
9 guess before that the question was when did I find out.

15:42 10 Q. That's the next question, actually.

11 A. Sorry.

12 So, I think around the end of 2016 or close to  
13 when this lawsuit was filed we started going through every  
14 single plan, every single project, and, you know, doing an  
15:42 15 audit to see if there was any other issues that would come  
16 up.

17 And on Mount Vernon, there --

18 MR. ZUMMO: Objection, Your Honor. We may need to  
19 approach.

15:42 20 MR. STROTHER: Okay.

21 THE COURT: Do you need to come up or do you  
22 understand what we're talking --

23 MR. STROTHER: I think I understand.

24 By Mr. Strother:

15:42 25 Q. I want you to focus on Mount Vernon.

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1 A. Okay.

2 MR. STROTHER: Is that in issue?

3 MR. ZUMMO: I would love to follow up on the audit,  
4 but we've discussed this before.

15:42 5 MR. STROTHER: Yes.

6 THE COURT: All right. Go on.

7 All right. Move around it, then, if you have  
8 to.

9 MR. STROTHER: Yes.

15:42 10 By Mr. Strother:

11 Q. Did you learn about the Mount Vernon problem before or  
12 after the lawsuit was filed?

13 A. After.

14 Q. And, so, I think the questions that my opposing counsel  
15:43 15 have asked of other witnesses suggests that they think that  
16 the change to the Mount Vernon plan, so that the builder is  
17 now using a stock Cameron plan instead of a stock PWA plan,  
18 is because of the lawsuit.

19 A. It is.

15:43 20 Q. That's true. Right?

21 A. Yes.

22 Q. I mean, what do you have to say about that? Why did the  
23 lawsuit cause Urban Living to instruct Stephen Cameron to  
24 design something different?

15:43 25 A. Because I don't want them to feel that we're cheating

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1     them, and I don't want to be paying out money when it can be  
2     avoided by fixing the problem.

3                     And we did reach out and try to pay them first  
4     for that, and we were told, "No. The licensing agreement is  
15:43 5     terminated."

6     Q. Okay. I'd like to talk to you about how Urban Living  
7     calculates its net profit. So, I'm going to show you a few  
8     exhibits.

9                     MR. STROTHER: Your Honor, may I please have the  
15:44 10    laptop.

11                    You know, I'm going to do something different  
12    because I found an exhibit, Exhibit No. 12. We might as  
13    well get into it because my fingers are on it.

14                    THE COURT: Whose exhibit?

15:44 15                   MR. STROTHER: Defendants' Exhibit No. 12.

16                    THE COURT: Defense 12. All right.

17    By Mr. Strother:

18    Q. Are these photographs of a finished Nagle unit?

19    A. Yes.

15:44 20    Q. Okay. I'd like to just go through them quickly so the  
21    jury can get an understanding of what these look like when  
22    they're no longer plans.

23                    Is this the entry to one of the Nagle units?

24    A. Yes.

15:44 25    Q. And this is one of the six units actually based upon the

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1 D5-214 plan originally?

2 A. Correct.

3 Q. Okay. First of all, does it have the little curve at  
4 the bottom of the stairs?

15:45 5 A. No, it does not.

6 Q. All right. What room is this?

7 A. The first floor bedroom.

8 Q. This is on the same floor as the garage?

9 A. Correct.

15:45 10 Q. Same room?

11 A. Yes.

12 Q. Is this the bathroom that is downstairs? Can you tell?

13 A. It is, because I can see the shower in the background.  
14 Originally, I thought it was maybe the powder in that view.

15:45 15 But because the shower is there -- we typically will put  
16 that on the first floor.

17 Q. I guess you can also see the exterior fence through the  
18 window in the shower.

19 A. Correct.

15:45 20 Q. Is this just a shower?

21 A. Yeah. Just a zoom-in of the tile.

22 Q. What are we looking at here?

23 A. Kitchen on the second floor.

24 Q. The cabinets, are these custom-made?

15:45 25 A. I think here they used a factory -- Well, I can't tell

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1 in that picture, but I think they were done at the factory.

2 But I'm not sure. I can't tell by this picture.

3 Q. From every angle, what are we looking at here?

4 A. Living room and dining room.

15:46 5 Q. Is the dining room where the chandelier is?

6 A. Correct.

7 Q. Is this the same room from a different view?

8 A. Correct. If you can go back one, I want to point out  
9 something else.

15:46 10 They were really talking about the staircase  
11 and how it was grand and had the curves. They didn't do  
12 that on this floor either.

13 Q. Okay. What room am I looking at here?

14 A. I think that's the living room with the doors facing  
15:46 15 out.

16 Probably the second bedroom on the third floor  
17 or the master.

18 Q. Okay. Is this the same room?

19 A. Yeah. With the size proportion. Looking at this, it's  
15:47 20 probably the master. And the double doors, I think they are  
21 to the bathroom.

22 Q. Is this the master closet?

23 A. Yes.

24 Q. And is this the master bathroom?

15:47 25 A. Correct.



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1 Q. Now, a quick question.

2 The selection of the faucets and the  
3 countertops and the sinks, are those anything that come from  
4 any architect's plans?

15:47 5 A. No.

6 Q. At least with regard to these spec townhomes.

7 A. Correct.

8 Q. Who chooses those finish materials?

9 A. That is part of our UPM services. We have two interior  
15:47 10 designers on staff, and then I'm heavily involved with  
11 those.

12 Again, with my background from FF&E, I would  
13 actually help select all the finishes based on consumer  
14 demand and what the trends are at that time frame.

15:48 15 Q. What bathroom is this?

16 A. Again, that's probably the tub. So, it's probably the  
17 second bathroom upstairs on the third floor.

18 Q. Is this the second bedroom on the third floor?

19 A. I can't tell in that picture. I apologize. I mean,  
15:48 20 from, again, the size, it most likely is, yes. And I think  
21 it's on the back side. So, most likely, yes.

22 Q. Okay. That's the last picture I have in that exhibit.

23 Okay. Back to accounting. First, I'm going  
24 to begin with the Nagle project. This is Defendants'  
15:48 25 Exhibit 16. And I can zoom in when you need me to,

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1 Mr. Ramani.

2 Can you tell us what it is we're looking at.

3 A. That's the list price -- or the -- I'm sorry -- the  
4 sales price. And I want to -- I'll just keep it simple.

15:49 5 I mean, sometimes we have a list price in  
6 there 10-, 15,000 higher. We have room for negotiation.  
7 So, that's the sales price of what the homes actually ended  
8 up selling for.

9 The next line is --

15:49 10 Q. Really quickly: And these are for the six Nagle homes  
11 that were sold?

12 A. Yes. Correct.

13 Q. And these were the six that were built using the plans  
14 that Mr. Cameron created based upon the PWA plans. Right?

15:49 15 A. Yes. Correct.

16 Q. Okay. Then you were going to the next column.

17 A. That's your gross commissions. And, typically, I think  
18 on all of these is what they call a co-op transaction where  
19 there was an outside realtor involved in it.

15:49 20 So, again, our commissions vary from 5 to  
21 6 percent. On all of these transactions -- again, I'm just  
22 looking at it fairly quickly -- they were -- earned  
23 3 percent, meaning there was an outside agent. So, that's  
24 the gross commission before we pay our realtor in-house.

15:50 25 Q. So, if Urban Living had represented both the buyer and

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1 seller, this could be, possibly, twice as much?

2 A. Correct.

3 Q. But, here, you're saying that all of these transactions  
4 must have had an independent, different sales agent  
15:50 5 representing the buyer?

6 A. They definitely did. Otherwise, they would have showed  
7 18,000 or 19,000 and some change.

8 Q. How do you get to net commission here?

9 A. Our company is set up a little different than typical  
15:50 10 real estate companies. We have -- Again, I'm not going to  
11 bore you.

12 But we have a DC and an AC. "DC" is a  
13 "developer consultant" that's on salary.

14 THE COURT: Slow down just a little.

15:50 15 THE WITNESS: Sorry.

16 So, the developer consultant earns a smaller  
17 amount of commission, five to eight hundred dollars, plus a  
18 salary. And that's why on these transactions we didn't have  
19 one of our own realtors, like a 100 percent contract  
15:50 20 realtor, earning the 3 percent.

21 So, you'll see, I mean, roughly, about  
22 \$500 taken out of the gross commission, which is our net  
23 commission.

24 Q. What is the next column?

15:51 25 A. That is our operating costs. And we were asked to

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1 provide all our expenses, all our -- We're very, very  
2 detailed on our books.

3 We use Quicken. We have two full-time  
4 accountants -- I don't want to use the word "accountant" --  
15:51 5 bookkeepers on our staff.

6 And we have a very detailed general ledger,  
7 which the general ledger is the line items of each expense  
8 that we have throughout a year by month, by week, by day,  
9 that's inputted.

15:51 10 And, again, because we're not a traditional  
11 realtor -- You know, a lot of realtors -- You have an  
12 individual realtor working for John Daugherty, Prudential,  
13 Gary Greene. They don't have a lot of expenses besides  
14 their car, gas.

15:52 15 We're a brokerage firm and all the listings  
16 are house listings, meaning Urban Living. So, you know,  
17 again, the showroom, the colored brochures -- We spend a  
18 substantial amount of money on advertising, close to  
19 100,000 a month.

15:52 20 So, there's a lot of, you know, salaries. We  
21 have almost 50 employees -- salaried employees, not licensed  
22 realtors on a 100 percent commission.

23 So, the only accurate, true way to come up  
24 with the number is to either look at an annual basis of what  
15:52 25 those expenses are and divide them by the number of homes

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1 that you've sold.

2 And what we wanted to do, also -- And there's,  
3 I think, additional charts and ledgers and all of that in  
4 the exhibits that you'll be able to see the supporting  
15:52 5 numbers where we arrived with them.

6 But if we then looked at that period, time  
7 frame, of when these homes were actually sold and took those  
8 expenses and then divided them, if there was 50 homes that  
9 month that were sold, then our expenses -- I'm just  
15:53 10 rounding -- you know, divided by your commissions or your  
11 expenses then gives you your net profit.

12 Q. So, to make sure I understand: Basically, in one row,  
13 all of these numbers are -- I guess you what? You subtract  
14 all of these numbers from the sales price?

15:53 15 A. Well, first, you have to take the 3 percent to earn the  
16 gross commission.

17 Q. Right here [indicating].

18 A. Then you subtract -- which the checks are in the  
19 exhibits -- what was actually paid out to the employee or  
15:53 20 the realtor.

21 Then the next line is -- You take the total  
22 expense divided by the transactions for that month and then  
23 that gives you your operating costs.

24 And then, if you take -- Your net commission  
15:54 25 less your operating cost equals your net income or your net

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1 profit.

2 Q. So, from the six Nagle units, Urban Living's net profit  
3 after deductible expenses is \$16,274.90?

4 A. Correct. That's accurate.

15:54 5 Q. Let's look at some of the additional documents.

6 This is just Page 2 of the same exhibit. And  
7 I know it's completely illegible up there. We can zoom in  
8 when you need.

9 Tell me what it is we're looking at.

15:54 10 A. These are that general ledger. Every account in the  
11 general ledger -- You know, I'm just using numbers. It's  
12 usually a four-digit number in our accounting system, and  
13 they're usually grouped, you know, by payroll -- Like all  
14 these people would be payroll, meals, and it keeps going on,  
15:55 15 office expenses. It's all broken out and very detailed.

16 Q. So, the number -- Let's see if there is a number.

17 The number at the bottom, is this the total  
18 overhead expenditures for Urban Living for that particular  
19 month?

15:55 20 A. Correct.

21 Q. So, I'm going to show you now Exhibit No. 2. This is  
22 Defendants' Exhibit No. 2, which is a list of all of the  
23 closings in that month of December.

24 Tell me why this is an important exhibit.

15:55 25 A. Well, this will give you our total sales and how many

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1 transactions. So, the key thing here is the transaction  
2 amount.

3 And I think there should be another page that  
4 will show the commissions that came in, also, which is the  
15:56 5 revenue that came into the business out of those  
6 39 transactions.

7 But I have to have a starting point of how do  
8 you take and arrive at your expenses per transaction, and  
9 the only way to do that is to see what your total  
15:56 10 transaction volume was.

11 THE COURT: Before we delve into that, we got  
12 underway about, what, 2:15, 2:20. Correct?

13 MR. ZUMMO: Yes, Your Honor.

14 THE COURT: We're now pushing four o'clock. So, I  
15:56 15 know we're going to adjourn early today, but let's take just  
16 a little break.

17 Let's get back in -- We'll get back in for  
18 about 30 minutes, maybe longer, depending upon some  
19 information I get while we're there.

15:56 20 But at this time just check your watch and  
21 we're going to get back ready to resume at 4:10. We'll see  
22 you at that time.

23 (Brief recess)

24 (Jury present)

16:16 25 THE COURT: Thank you. Be seated, please.

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1 Go right ahead, sir.

2 MR. STROTHER: Thank you.

3 THE COURT: Oh. We're going to run a little bit

4 over with the proposed time. We're going to complete the

16:16 5 direct exam of this witness -- okay? -- so at least we keep

6 continuity before we take a break.

7 All right. Go right ahead.

8 By Mr. Strother:

9 Q. So, we were talking about accounting, and I believe we

16:17 10 had just looked at your list of closings for that particular

11 month, which was Defendants' Exhibit No. 2.

12 The next document I'd like to show you is

13 Defendants' Exhibit No. 3. Can you tell the jury what this

14 is.

16:17 15 A. That is a check to a transaction coordinator for \$50.

16 The transaction coordinator is the person that actually

17 would go to help the inspector or the realtor to open the

18 door. And, so, we have an employee that focuses on that

19 part of it.

16:17 20 Q. And are there other checks in Exhibit No. 3?

21 A. Yes. That's what I was explaining to you on the DC, the

22 development consultant. That is a salaried employee that

23 earns a smaller amount of the commission, I was telling you,

24 4- to \$500. That's one of those checks.

16:17 25 Q. And can -- Is the "Memo" line helpful on the check to



*Ramani - Direct by Mr. Strother*

1 determine what the check was actually for?

2 A. Correct. It says "Nagle" on that one, of course.

3 Q. Do these checks appear on this first page where you have  
4 the calculation?

16:18 5 A. The check number doesn't appear, but it's the actual  
6 deducted amount from the gross commission.

7 Q. So, the checks are essentially invisible right here --

8 A. Correct.

9 Q. -- between "Gross Commission" and "Net Commission"?

16:18 10 A. Correct.

11 Q. Next I'd like you to look at Exhibit No. 4 --  
12 Defendants' Exhibit No. 4.

13 Can you tell the jury what Exhibit 4 is.

14 There are 34 pages.

16:18 15 A. That's the HUD, which is the closing statement.

16 When you purchase a home, you actually end up  
17 going to a title company. The title company creates the  
18 actual disbursement, sales price, mortgage, how much cash  
19 the buyer or seller would have to bring to the table.

16:19 20 And this is a very detailed line item closing  
21 statement that's prepared completely independent from the  
22 title company, and it'll also then be able to tie in to the  
23 commission checks that they pay us. So, you'll have the  
24 supporting information to see what dollar amount came to us.

16:19 25 Q. And what is Defendants' Exhibit No. 5?

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1 A. So, that is a -- Okay. That's probably our bank account  
2 because it says -- Yeah. It should be incoming.

3 So, we bank with Chase and it says "Chase" on  
4 there and then incoming wire. So, it'll match again, if you  
16:19 5 were to look at that transaction and the address, the dollar  
6 amount coming into our bank account on that HUD.

7 Q. And do these appear on the -- Defendants' Exhibit 16?

8 A. Correct. I think -- again, I didn't look at them very  
9 carefully. But if you look at the Chase wire incoming, I  
16:20 10 think it was 9,735, which will match the first one. It'll  
11 tie in one by one by one.

12 Q. Okay. Have you performed this analysis for the other  
13 locations -- for the other projects at issue in this case?

14 A. I think so. Yes.

16:20 15 MR. ZUMMO: Objection, Your Honor. Under  
16 Rule 37(c), no such material has been disclosed to us.

17 MR. STROTHER: Your Honor, this is Exhibit 17 that  
18 is in evidence that I intend to ask him about. I'll ask him  
19 to identify what it is.

16:20 20 THE COURT: Whose 17? Yours?

21 MR. STROTHER: Defendants' Exhibit 17.

22 THE COURT: Defendants' 17. All right. Rephrase  
23 the question. And I'll keep that in mind. And I'll -- You  
24 check 17 and so will I. There it is.

16:20 25 Go on.

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1 By Mr. Strother:

2 Q. You know, before we go into the exhibit, I think it may  
3 be useful for me to get onto the whiteboard and ask you a  
4 few questions about the projects and what Urban Living's  
16:21 5 involvement is. But I do want to come right back to Exhibit  
6 17.

7 MR. STROTHER: Your Honor, I'm going to use the  
8 easel for a moment.

9 THE WITNESS: I don't have 17. So, you're going to  
16:21 10 put it up?

11 MR. STROTHER: Oh. Yeah. I'm going to talk about  
12 17 in a minute.

13 Your Honor, is the placement of the easel  
14 okay?

16:21 15 THE COURT: Yeah. It's fine with me.

16 MR. STROTHER: Okay.

17 By Mr. Strother:

18 Q. So, the first project and the project that we've been  
19 talking mostly about is Nagle. And, so, we already know  
16:22 20 what Urban Living's involvement is with that.

21 Mount Vernon is the project we've been talking  
22 about second-most. I believe you've explained that as well.

23 Was Mount Vernon an UPM project?

24 A. Yes.

16:22 25 Q. So, what function did Urban Living play with Mount

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1 Vernon?

2 A. Urban Project Management and Urban Living. And I'm just  
3 going to -- Urban Living realtor, but we haven't sold any of  
4 them. They're just finishing them now.

16:22 5 And then UPM being complete, architectural,  
6 civil, structural, the project management side of it. And  
7 then same thing with Nagle.

8 Q. But did -- I might be beating a dead horse.

9 Were the Mount Vernon units built in any way  
16:22 10 related to the PWA plans?

11 A. No.

12 Q. Then there are three more projects that we haven't heard  
13 much about. One is EaDo, two is Stanford and three is  
14 Patterson.

16:23 15 Are you familiar with those three projects?

16 A. Just let me clarify. I think EaDo is EaDo Place, but  
17 we've been going by "EaDo" on it.

18 Q. Understood.

19 In fact, Stanford probably has a longer name?

16:23 20 A. Right.

21 Q. And Patterson probably has a longer name?

22 A. Yes.

23 Q. Are any of those three projects UPM?

24 A. No.

16:23 25 Q. What was Urban Living's involvement in those projects?

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1 A. The only role on those was to do the real estate  
2 marketing sales.

3 Q. Who was the builder for those three projects?

4 A. Oppidan.

16:23 5 Q. Who was also the builder on Nagle. Right?

6 A. Correct.

7 Q. And did Urban Living provide or connect any architect  
8 with Oppidan for those three projects?

9 A. No.

16:24 10 Q. Do you know who the architect was?

11 A. Bill Wooten.

12 Q. Bill Wooten?

13 A. Correct.

14 Q. Has Urban Living ever used Bill Wooten as an architect?

16:24 15 A. No.

16 Q. Has Urban Living ever provided Bill Wooten with any  
17 plans, much less PWA plans?

18 A. No.

19 Q. Do you have any idea whether Oppidan provided such plans  
16:24 20 to Bill Wooten?

21 A. I don't know.

22 Q. Why don't you know?

23 A. I mean, we have -- Their plans are on the website. Our  
24 plans are on websites. We have a showroom. You can walk

16:24 25 in. There's almost 80 to 100 brochures on that shelf. We

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1 have brochures in brochure boxes in front of the property.

2 So, if -- they have the ability to take  
3 anything off the internet, off our shelf, off our website;  
4 and, if they distributed it, it wasn't done with our  
16:24 5 knowledge.

6 I mean, I would have wanted to earn money and  
7 sell it through UPM. So, it'd be foolish for me to just let  
8 them take their plans and not make any money from me or  
9 them. That wasn't done --

16:25 10 THE COURT: Pull that microphone in, please.

11 THE WITNESS: Sorry, Your Honor.

12 So, that would have been foolish for -- I'm in  
13 business to try to generate income and make money. We  
14 didn't make anything on UPM at all on those projects.

16:25 15 By Mr. Strother:

16 Q. So, to be clear, Urban Living didn't provide a permit  
17 runner to those three projects or design expertise to those  
18 three projects?

19 A. Not architecture. I'd have to look and see if there's  
16:25 20 any quotes in the binder. Sometimes, you know, they would  
21 go get their own architect and we would still want to be  
22 involved in those finishes because we think that's critical,  
23 that the right finishes go in the home.

24 I'd have to have you look and see -- I can't  
16:25 25 tell you off the top of memory if we did do the finishes,

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1 but I know structural, civil, architectural, we did nothing  
2 on any of those three projects.

3 Q. And by "finishes" can you tell the jury what you mean.

4 A. Sure. Earlier you asked me about the plumbing fixtures,  
16:25 5 the tile, the carpet. Again, that's probably one of the  
6 most important things, I think, in building or selling a  
7 home, is to have the correct finishes in it.

8 And, so, sometimes our interior designers --  
9 Even if they had an outside architect, we would still help  
16:26 10 pick those finishes in that home.

11 Q. So, on those three projects and on all non-UPM projects,  
12 does Urban Living receive copies of the plans from builders?

13 A. Yes.

14 Q. In what form?

16:26 15 A. Typically, it'll be a PDF.

16 Q. What does Urban Living do with those plans?

17 A. We'll put them on the brochure and we'll put them on the  
18 website for marketing purposes.

19 Q. Okay. So, Nagle is UPM, Mount Vernon is UPM, but EaDo,  
16:26 20 Stanford and Patterson are not?

21 A. Correct.

22 Q. Okay. But you understand that Urban Living is still  
23 being sued for infringement on those three projects?

24 A. Correct.

16:27 25 Q. And, as such, have you produced in this lawsuit Urban

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1 Living's expenses and income?

2 MR. ZUMMO: Objection, Your Honor. Again, under  
3 Rule 37, no such backup information was presented -- was  
4 produced.

16:27 5 THE COURT: All right. See where it is if you've  
6 got it.

7 MR. STROTHER: Sure. Let's take a look at  
8 Defendant's Exhibit 17.

9 MR. ZUMMO: And we renew our objection to  
16:27 10 Defendant's Exhibit 17, Your Honor, because there was never  
11 any backup information produced on anything except expenses  
12 on Nagle for January 20 -- or for December 2016.

13 MR. STROTHER: Your Honor, we have already admitted  
14 it into evidence at pretrial. And, Your Honor, my position  
16:27 15 is still the same. It's in evidence.

16 THE COURT: Anything further?

17 MR. ZUMMO: It was never produced, Your Honor.  
18 That's what --

19 THE COURT: Give me the underlying --

16:28 20 MR. ZUMMO: Under Rule 37, these documents that  
21 underlie everything --

22 THE COURT: That's what I thought.

23 MR. ZUMMO: -- except Nagle, have never been  
24 produced.

16:28 25 THE COURT: All right. The easiest thing to do is



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1 I always just pull out the rule.

2 MR. ZUMMO: 37(c), Your Honor.

3 THE COURT: 37(c).

4 You said that it was supplied. Is that

16:28 5 correct?

6 MR. STROTHER: Your Honor, it's Bates-labeled

7 Page 485. This document --

8 THE COURT: Where?

9 MR. STROTHER: On the exhibit.

16:28 10 THE COURT: At the lower right?

11 MR. STROTHER: Yes, Your Honor.

12 MR. ZUMMO: I'd be happy to tender it up. I have a  
13 copy for the Court.

14 THE COURT: I've got it right here. 485. Right?

16:28 15 MR. ZUMMO: Yes, Your Honor. And this is --

16 MR. STROTHER: I don't think he's saying it was --  
17 that document wasn't produced.

18 THE COURT: He's saying the underlying documents.

19 MR. ZUMMO: Correct. And, as the Court can see,

16:29 20 this was created purely for this litigation. It has  
21 calculations. This is not some QuickBooks report. This is  
22 a summary that was produced for this lawsuit for this trial.

23 MR. STROTHER: Mr. Ramani can go into detail about  
24 how it was created. Yes, it was created in response to an  
16:29 25 interrogatory, but it is from QuickBooks.

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1 THE COURT: Where are the underlying documents?

2 MR. STROTHER: Umm...

3 THE COURT: All right. Let's put it this way. I'm  
4 not saying I'm not going to get to this. Move off this one.

16:29 5 Finish up your direct. Okay?

6 MR. STROTHER: Okay.

7 THE COURT: Then we can rule on it at the end of  
8 the day so we don't get bogged -- Or is this it?

9 MR. STROTHER: This is almost it. And there are a  
16:29 10 couple of areas I can get into.

11 THE COURT: Get into those. Then we'll see what  
12 time -- We may take a five-minute break. Let me resolve  
13 that so we can move on it quickly. Okay?

14 MR. STROTHER: Yes, Your Honor.

16:30 15 THE COURT: I'd just like us to get moving off that  
16 and then see -- If I need more time, we'll let the jury go  
17 and we can wrap it up just on that one point when we get  
18 back.

19 Go right ahead.

16:30 20 MR. STROTHER: Yes, Your Honor.

21 By Mr. Strother:

22 Q. Let me ask you about the line of questioning that

23 Mr. Bonham and Mr. Cameron went into regarding the gentleman  
24 who went and set up the menu at Cameron Architect's

16:30 25 computer.

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1 A. Okay.

2 Q. Did you have a conversation with Miss Wood about that  
3 topic?

4 A. Yes.

16:30 5 Q. What was the conversation?

6 A. Well, one of the major issues that Cameron was having  
7 with using their plans and where we were getting into some  
8 of the problems was the menu-ing or what I call the layering  
9 system.

16:30 10 And I actually spoke to Sam about it multiple  
11 times, saying, "Look. He's having this problem." And they  
12 had made the decision to actually send Scott Harris to his  
13 office.

14 I didn't know they were friends, by the way.

16:31 15 So, I'm going to avoid that topic.

16 But they -- Sam said she was going to send him  
17 to his office to set that up because he's the one that  
18 actually produced the layering system.

19 Q. Let me make sure that it's crystal-clear.

16:31 20 You called Sam and said, "There's a problem."  
21 Right?

22 A. Correct.

23 Q. And then Sam said, "I'm sending Scott to Cameron's  
24 office"?

16:31 25 A. Now, this went back and forth for about two weeks

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1 because I think there was a scheduling issue and she had to  
2 get --

3 THE COURT: Slow down, please.

4 THE WITNESS: Sorry. Sorry.

16:31 5 THE COURT: It went back and forth. What  
6 ultimately happened?

7 THE WITNESS: Scott ended up at his office to set  
8 up that layering menu system.

9 By Mr. Strother:

16:31 10 Q. How long did it take Sam to get Scott out to the office?

11 A. If I recall -- again, it's been a while -- but I think  
12 it was about two weeks.

13 Q. Did Miss Wood explain to you why it was going to take  
14 that long?

16:31 15 A. I don't think so. I don't remember.

16 Q. Let me ask you about the difference between marketing  
17 plans and architectural drawings.

18 What are marketing plans?

19 A. Just a basic, simple line drawing that reflects the  
16:32 20 bedrooms, bathrooms. Sometimes it will have some of the  
21 dimensions in them, not line dimensions like you saw in some  
22 of those plans where there was a bunch of lines on them.  
23 Just a simple bedroom is 10 by 10. Living room is 12 by 14.

24 So, it's just a very simplified version of the  
16:32 25 plan that we can use online. And on our marketing brochures

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1 is typically where we would end up putting those.

2 Q. Are those on Preston Wood's website without copyright  
3 information?

4 A. Yes.

16:32 5 Q. How do you know?

6 A. I've been on their website, and I have printouts here  
7 that will show that.

8 MR. ZUMMO: Your Honor, we -- Has this been  
9 produced?

16:33 10 MR. STROTHER: No. He just --

11 MR. ZUMMO: We object to any exhibit that hasn't  
12 been produced to us prior to trial and that isn't marked as  
13 part of the Court's procedures.

14 MR. STROTHER: I'm entitled to put on a rebuttal  
16:33 15 case, and Miss Wood testified that it is not available  
16 without copyright, and this document proves absolutely  
17 otherwise. And we just found it.

18 Would you like me to approach, Your Honor, and  
19 let you see it?

16:33 20 THE COURT: No. I'm just thinking.

21 I don't want to kick cans down the road. I  
22 usually don't.

23 See if they can work it out. That's what  
24 we're waiting on. If they can't, then the Judge will do it.

16:33 25 MR. BONHAM: Your Honor, what she testified is that

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1 we have our copyright management information on all of our  
2 materials.

3 This shows PW&A. Copyright management  
4 information, over 1202, is anything that gives the world  
16:34 5 notice who owns it.

6 I also think, if we even had a chance to see  
7 this, we would go onto the website and there are going to be  
8 all sorts of copyright notices elsewhere.

9 MR. STROTHER: I'm happy to go on the website live  
16:34 10 right now.

11 MR. BONHAM: Again, you're going to have -- It's  
12 right there on top, "PW&A". This is identifying who owns  
13 the work.

14 MR. STROTHER: Then, they can argue that this  
16:34 15 satisfies the statute, but they're leading the Court to  
16 believe that it's on this document and it's not. There is  
17 no copyright.

18 MR. BONHAM: The other thing is, again, Judge, I'd  
19 also ask the relevance of it because the question is not  
16:34 20 whether or not it's on ours. It's whether they took it off.

21 THE COURT: We're kicking that one down the road.  
22 Finish up as much as you can with this witness.

23 MR. STROTHER: Your Honor, that may be it. Let me  
24 look at my --

16:34 25 THE COURT: If it may be it, then we'll be here for

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1 a while.

2 But there's no need for you to hang around.

3 Okay? Because we're almost through with all the testimony  
4 in the case, generally. I mean, we're not going to be able  
16:35 5 to wrap it up today, but it will move rapidly on Monday.

6 MR. STROTHER: Your Honor, I can ask a few more  
7 questions.

8 THE COURT: Can or you cannot?

9 MR. STROTHER: I can.

16:35 10 THE COURT: Go on.

11 By Mr. Strother:

12 Q. Mr. Ramani, what is the value of the PWA plan to Urban  
13 Living's profits?

14 MR. ZUMMO: Objection, Your Honor. That's  
16:35 15 undisclosed expert testimony.

16 THE COURT: Hold it.

17 Bruce, read it back again, please.

18 (Question read back by court reporter)

19 MR. ZUMMO: It's opinion testimony, Your Honor.

16:35 20 THE COURT: Sustained.

21 MR. STROTHER: Your Honor, Mr. Ramani is the owner  
22 and president of Urban Living and has been testifying all  
23 afternoon about the profits.

24 I think we asked him what the value of the  
16:35 25 plan is. It doesn't require expert testimony. It's factual

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1 testimony.

2 THE COURT: Value of whose plans? Of the  
3 Plaintiff's plans?

4 MR. STROTHER: The PWA plans to Urban Living's  
16:35 5 profits on a given project.

6 THE COURT: Sustain the objection. I got it.  
7 Sustain it.

8 By Mr. Strother:

9 Q. What is the cost to Urban Living in the context of Urban  
16:36 10 Living's profits on any sale?

11 A. \$250.

12 Q. Let me show you the easel.

13 Mathematically, what portion of the pie is  
14 \$250?

16:36 15 THE COURT: Of whose pie?

16 MR. STROTHER: Urban Living's net profits.

17 THE COURT: Okay.

18 A. 1 to 2 percent.

19 By Mr. Strother:

16:36 20 Q. How do you arrive at that mathematical number, 1 to  
21 2 percent?

22 A. Take the commission and back into that \$250.

23 Q. So, if the commission were \$25,000, \$250 represents  
24 1 percent?

16:37 25 A. Right.



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1 Q. When it's closer to \$10,000, I guess that's around  
2 2.5 percent?

3 A. I'm trying to go on the high side, again, to be fair.

4 Q. Okay.

16:37 5 MR. STROTHER: Your Honor, I have more direct for  
6 Mr. Ramani, but it's all based upon rulings to come from the  
7 Court.

8 THE COURT: We're going to be here for a while yet.  
9 Let's do it this way. For sure, the testimony will be over  
16:37 10 on Monday, and the attorneys have moved it along rapidly.

11 I want to thank them for that.

12 But rather than have you wait around and have  
13 me do it and get you back in, it's no hurt just for those  
14 couple of subjects, if I allow it in, to wrap up on direct  
16:37 15 and then we'll go cross on this witness on Monday.

16 Thank you for your patience. It's an  
17 interesting case. It's moving along. We'll see you Monday,  
18 10:00 a.m. Thank you. And good afternoon. You can leave  
19 your books in the jury room.

16:38 20 (Jury not present)

21 THE COURT: You can step down, sir.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Now, let me ask you this. Let's get  
24 back to Exhibit 17.

16:38 25 Is it a summary that was created from other

1 documents, sir?

2 MR. STROTHER: Yes.

3 THE COURT: Okay. And where are those documents?

4 MR. STROTHER: They will be on Urban Living's  
16:38 5 computers. By "documents" I'm including electronic data.

6 So, this is an exported -- Much of the data is  
7 exported. So, it's on the same computer that this came  
8 from. There could be scans -- Like the other one, there  
9 could be scans of checks and HUD statements.

10 THE COURT: Okay. Now, Plaintiff, let me hear you  
11 on that.

12 MR. ZUMMO: I'll give the Court the example.

13 For January 20- --

14 THE COURT: What are you looking at?

15 MR. ZUMMO: For December 2016.

16 THE COURT: By the way, just for the record, Bruce,  
17 if someone's talking and the Judge is talking, who do you  
18 take down?

19 THE COURT REPORTER: The Judge.

16:39 20 THE COURT: All right. Go on.

21 MR. ZUMMO: This, Your Honor, is my marked-up copy  
22 of Defendants' Exhibit 16.

23 THE COURT: All right. Hang on. By the way, do we  
24 have an extra copy of your exhibits? Because my local rules  
16:39 25 require another copy right up here.

1 MR. STROTHER: I'm sorry.

2 Do you want me to take those tabs out?

3 THE COURT: No. No.

4 All right. We're looking at 16. Correct?

16:39 5 MR. ZUMMO: Yes, Your Honor. And this is just for  
6 an example.

7 THE COURT: Okay. I got 16.

8 MR. ZUMMO: You'll see the first page is their --  
9 I'm sorry. This is from December.

16:40 10 THE COURT: Yeah.

11 MR. ZUMMO: This has the six properties with  
12 commissions and net commissions. And then the -- Page 2  
13 through the end is a type of accounting report of the  
14 expenses for that same month.

16:40 15 THE COURT: So, you're saying that's the backup.

16 MR. ZUMMO: This is the backup that they did  
17 produce.

18 THE COURT: Okay. And you're saying you need that  
19 for No. 17.

16:40 20 MR. ZUMMO: And I'll add to it if the Court...

21 I think Mr. Strother and his client made an  
22 effort to actually find the backup for the report for that  
23 month.

24 THE COURT: For 16?

16:40 25 MR. ZUMMO: So, we got copies --

1 THE COURT: Oh. Oh. For 16.

2 MR. ZUMMO: For 16.

3 THE COURT: But they don't have it for 17?

4 MR. ZUMMO: We don't have -- At least nothing, to  
16:40 5 my knowledge, in terms of either an expense report or the  
6 underlying documents with checks and invoices for any of  
7 these other projects or any other month besides December  
8 2016 was ever produced to us.

9 THE COURT: Now, let's look at 17. Do we have  
16:41 10 dates on there? I guess it has a "close" date on each one.

11 MR. STROTHER: Yes.

12 THE COURT: Hang on a second.

13 It has a "close" date to the right on each  
14 one. And on 16 --

16:41 15 MR. ZUMMO: Under the "Stanford Street" heading,  
16 there's nothing from December --

17 THE COURT: Where? On which one?

18 MR. ZUMMO: Page 1 of 17.

19 THE COURT: Okay.

16:41 20 MR. ZUMMO: They're grouped, Your Honor, by the  
21 project. So, EaDo Place --

22 THE COURT: Hold it.

23 I'm looking at the first page of 17.

24 MR. ZUMMO: Yes, sir.

16:41 25 THE COURT: That Live Oak?

1 MR. ZUMMO: Do you see the Live Oak -- the heading  
2 above that, the "EaDo Place"?

3 THE COURT: Oh. Yeah. I got it. Okay.

4 MR. ZUMMO: So, these were done by project.

16:41 5 THE COURT: Right.

6 MR. ZUMMO: And, so, they have one closing, it  
7 looks like, in December -- No. There are no December 16  
8 closings for EaDo. There are no December '16 closings for  
9 Stanford. None for Patterson Street.

16:41 10 THE COURT: For what year?

11 MR. ZUMMO: All they've produced to us is December  
12 of 2016.

13 THE COURT: But you're saying, when you look at  
14 EaDo Place, you've got closings in 15, 16 and 17. Correct?

16:42 15 MR. ZUMMO: Yes, Your Honor.

16 THE COURT: And you're saying you don't have that  
17 backup information.

18 MR. ZUMMO: That's correct, Your Honor.

19 THE COURT: What do you need it for?

16:42 20 MR. ZUMMO: We would need to see, for example,  
21 going back to Defendant's 16 --

22 THE COURT: All right. Hang on. I'm trying to  
23 follow this. Let me go back and get 16.

24 All right. Here's 16.

16:42 25 MR. ZUMMO: It would be possible to go to the end

1 of 16 where they have their total expenses.

2 THE COURT: Where is that?

3 MR. ZUMMO: On this one -- I'll just tell the Court  
4 it looks like this, but it's the last page of 16.

16:42 5 THE COURT: Hang on. All right. Go on. I have  
6 it.

7 MR. ZUMMO: Mr. Ramani, on his direct, showed us  
8 that he used that last number to then calculate an overhead  
9 deduction --

16:43 10 THE COURT: What? That 237,000?

11 MR. ZUMMO: Yes, Your Honor. And he used that  
12 number to calculate his overhead deduction that went into  
13 his calculation of profit for the Nagle project.

14 THE COURT: Go on.

16:43 15 MR. ZUMMO: If we don't have even the report that  
16 gives us that total for these other projects for the months  
17 and years in question, the time period in question, we can't  
18 double-check his summary.

19 THE COURT: Where can they find that?

16:43 20 MR. STROTHER: Where? It's not been produced, but  
21 it's on QuickBooks at my client's office.

22 By the way, Your Honor, this document was  
23 produced months ago.

24 THE COURT: What document?

16:43 25 MR. STROTHER: Exhibit 17.

1 THE COURT: Go on.

2 MR. STROTHER: It was just produced months ago.  
3 They're picking and choosing what they want from this  
4 document.

16:43 5 This is the one document that gives them the  
6 gross commissions that were received by my client. And  
7 then, by agreement, we entered into the Court's record an  
8 agreed fact that these were the gross commissions. Now,  
9 they're saying 'Aaaaaah! You can't use the rest of it.'

16:44 10 MR. ZUMMO: The --

11 MR. STROTHER: And that's unfair. They waited many  
12 months.

13 MR. ZUMMO: The document was not produced until  
14 after Mr. Ramani's deposition.

16:44 15 THE COURT: Where in the stipulated facts do they  
16 refer to this? I'm looking at that right now. What number  
17 am I looking at?

18 MR. STROTHER: Your Honor, let me look at my copy  
19 of the stipulated facts.

16:44 20 They begin on 26, 27 and 28.

21 THE COURT: All right. Now, looking back --  
22 looking at 16 -- right? -- the last page of 16, that 237-.  
23 Right? That's 237,000. That's on the last page of 16.

24 Now, that's not -- Well, here. You're saying,  
16:45 25 then, that -- Oh. Those are what? The commissions

1 received?

2 MR. ZUMMO: No, Your Honor. The 237- was what they  
3 say are their total overhead expenses.

4 THE COURT: Okay. Now, what about -- Now, you just  
16:45 5 referred me to 25, 26 and -- What? Is it --

6 MR. STROTHER: 26, 27 and 28.

7 THE COURT: What are those numbers, 26, 27 and 28?  
8 Commissions?

9 MR. STROTHER: Those are Urban Living's gross  
16:45 10 commissions on those three projects, and they're the totals  
11 of the columns that appear on Exhibit 17. And those are the  
12 only place those numbers appear.

13 THE COURT: And --

14 MR. ZUMMO: We disagree.

16:46 15 MR. STROTHER: I'm happy to hear you out.

16 THE COURT: And your position is that's the figure  
17 that is key to the case. Is that correct?

18 MR. STROTHER: Key to their case.

19 THE COURT: To their case.

16:46 20 And that's already in by stipulation.

21 MR. STROTHER: Yes, Your Honor.

22 THE COURT: And the position is that -- I'm looking  
23 at 17. Does 17 relate to 26, 27 and 28?

24 MR. STROTHER: Directly.

16:46 25 THE COURT: All right.



1 MR. ZUMMO: They also produced -- With this  
2 document were the HUD-1 statements for all of those sales.  
3 So, they produced the underlying documents, not just this  
4 lawsuit-created summary.

16:46 5 So, we had the underlying documents for the  
6 commission income. We don't have any underlying documents  
7 for any expense numbers or summaries. And we only have a  
8 report that we've showed the Court as Defendants' Exhibit 16  
9 that gives a printout report for one month.

16:47 10 THE COURT: All right. Now, as to 17, what is it  
11 that you say you need? I know you've said it already, but  
12 I'm trying to get a handle on it.

13 MR. STROTHER: Me, Your Honor, or...?

14 THE COURT: No.

16:47 15 MR. ZUMMO: We need the underlying documents from  
16 which the expense information was derived or prepared that  
17 is on Exhibit 17.

18 MR. STROTHER: All right. That's their first  
19 request, and I'm happy to get it for them.

16:47 20 THE COURT: All right. When can you get it for  
21 them?

22 MR. STROTHER: May I ask my client?

23 THE COURT: Yeah.

24 MR. RAMANI: I'll do it over the weekend.

16:47 25 THE COURT: Well, can you get --

1 MR. STROTHER: Sorry, Your Honor.

2 THE COURT: Can you get -- Let me ask this. I'm  
3 asking Mr. Strother now.

4 You tell me. Confer with your client. When's  
16:47 5 the earliest you can get it to the other side --

6 MR. STROTHER: Yes, Your Honor.

7 THE COURT: -- to allow you to go into the  
8 questions you want to.

9 MR. STROTHER: Yes, Your Honor.

16:47 10 THE COURT: All right. Hold it. Hold it. Off the  
11 record.

12 MR. STROTHER: Yeah.

13 THE COURT: Let's go off the record for a moment.

14 (Off-the-record discussion)

16:50 15 THE COURT: Back on the record.

16 Okay. Hold on.

17 MR. STROTHER: My client can have the underlying  
18 information by Sunday morning.

19 THE COURT: All right. Just get it to them.

16:50 20 MR. ZUMMO: Yes, Your Honor.

21 THE COURT: See what you can do with it.

22 Now, what about that other matter concerning  
23 that rebuttal exhibit. Okay? Hand it up, somebody. Let me  
24 take at least a look at it and see what -- Okay.

16:50 25 All right. Now, what's this being offered

1 for?

2 MR. STROTHER: Your Honor, we believe Miss Wood  
3 testified or at least --

4 THE COURT: Miss who?

16:51 5 MR. STROTHER: Miss Wood.

6 THE COURT: Okay.

7 MR. STROTHER: -- testified -- Let me back up.

8 They have a DMCA claim in which they're  
9 alleging that Urban Living, with intent, published PWA  
16:51 10 copyrighted information with the copyright management  
11 information altered or removed.

12 THE COURT: Okay.

13 MR. STROTHER: One of the ways she testified was  
14 that there was essentially no way to get that information  
16:51 15 that appears in Urban Living's marketing material other than  
16 a place that it has the copyright management information on  
17 there.

18 That is a screen print from Preston Wood's --  
19 PWA's website as of yesterday.

16:51 20 THE COURT: From PWA's website?

21 MR. STROTHER: Yes. And it does not contain what  
22 we contend is the copyright management information.

23 THE COURT: Is this the exact floor plans involved  
24 in this case?

16:51 25 MR. STROTHER: These are, I think, three that are

1 involved in one of the five projects, yes.

2 THE COURT: All right. What's the response?

3 MR. ZUMMO: Judge, we'll just show you the rest of  
4 the page from the website. I don't know the best way to do  
16:52 5 it.

6 THE COURT: Yeah. Come on up.

7 What are we looking at here?

8 MR. BONHAM: This is the home page --

9 THE COURT: You've got to speak up. He's got to  
16:52 10 pick it up.

11 MR. BONHAM: If you take PWA's website and you  
12 scroll down --

13 THE COURT: Speak up louder because he's got to  
14 take it down.

16:52 15 MR. BONHAM: Go on to the PWA website. And this is  
16 a new website as of this week.

17 THE COURT: This is your website?

18 MR. BONHAM: My client's website.

19 THE COURT: Yes.

16:52 20 MR. BONHAM: You scroll down to the bottom and you  
21 see there is a copyright notice.

22 THE COURT: Okay.

23 MR. BONHAM: We've also got the -- You know, of  
24 course, every page has PWA's logo on top. We can -- You  
16:52 25 know, I think it's consistent with her testimony. And --

1 MR. ZUMMO: And this website was not a website that  
2 was -- It's a fairly new website.

3 MS. WOOD: [Inaudible speech]

4 THE COURT: Hold it.

16:52 5 When did it come out?

6 MS. WOOD: I need to go back and check. It's been  
7 probably 60 days.

8 THE COURT: What?

9 MS. WOOD: We have the --

16:53 10 THE COURT: Within the last 60 days?

11 MS. WOOD: Yes.

12 THE COURT: All right.

13 MR. STROTHER: And Mr. Ramani can testify and  
14 Mr. Mock, who has given deposition testimony in this case  
16:53 15 for PWA, testified this stuff was on the internet back then.  
16 So, that's a sleight of hand and --

17 THE COURT: What was on the internet?

18 MR. STROTHER: This. This is called a "marketing  
19 plan", Your Honor.

16:53 20 THE COURT: This was on their website during the  
21 time in question in this case?

22 MR. STROTHER: Yes. And I understand Mr. Bonham  
23 pointing out at the bottom of one page or some pages it has  
24 the copyright information.

16:53 25 This page does not. You click on it and it

1 goes up. The DMCA claim doesn't require my client to have  
2 been the one that retrieved this information.

3           Instead, my client must have forwarded on the  
4 information and the copyright management information must  
16:53 5 have been altered or removed. This breaks that chain.

6           It shows that someone could have taken this,  
7 snapped a screenshot of this and forwarded it to Urban  
8 Living without having altered or removed copyright  
9 management information. That's our contention.

16:54 10           THE COURT: All right. Got it. Take your seat and  
11 we'll talk about it.

12           Go on.

13           MR. ZUMMO: The exhibit that they're offering is  
14 not from the time period in question. So, if this  
16:54 15 screenshot came from yesterday, that's a different website  
16 that has only been in place, according to Miss Wood, for  
17 about 60 days.

18           MR. STROTHER: So, 60 days ago PWA spoliated  
19 evidence.

16:54 20           THE COURT: Say that again.

21           MR. STROTHER: 60 days ago PWA spoliated evidence,  
22 and we shouldn't have the repercussions of that.

23           THE COURT: Well, talk about this. I mean, I got a  
24 handle on it. The question is: Is it a surprise? Is it  
16:54 25 timely? Is it relevant? And would you reasonably have been

1 able to foresee this?

2 So, this can't be really used as rebuttal  
3 evidence that you had no inclination might be necessary to  
4 be used at trial.

16:54 5 MR. ZUMMO: The time period in question, Your  
6 Honor, was -- We have counts of the times that their plans  
7 were on their website or that they were sending out e-mails  
8 with our material that didn't have our copyright notice.  
9 That was long before 60 days ago.

16:55 10 So, what a new website shows has nothing to do  
11 with the time period involved in this lawsuit. This lawsuit  
12 was filed in '16.

13 MR. BONHAM: '16.

14 MR. ZUMMO: And it's not spoliation of evidence to  
16:55 15 change a website. And I'm pretty sure we have a backup of  
16 the website as it existed before 60 days ago.

17 So, if somebody wanted to preserve our website  
18 or make an exhibit, they could have done it at that time.  
19 The backup is available today.

16:55 20 MR. STROTHER: Your Honor, they're suing my client  
21 for \$500 million.

22 MR. BONHAM: No, we're not.

23 MR. ZUMMO: No, we're not.

24 MR. STROTHER: They're accusing us of 20,000  
16:55 25 violations for a maximum of 25,000 violations -- I mean

1 25,000 per violation.

2 This is a serious deal. Miss Wood led the  
3 jury to believe that it was not possible to get a data file  
4 like this without the copyright information. We have got to  
16:56 5 rectify that.

6 MR. ZUMMO: She didn't say anything like that.

7 MR. STROTHER: Then, they have no evidence. That's  
8 the only piece of evidence that I think I remember hearing  
9 that suggests that --

16:56 10 THE COURT: What -- I'm sorry. Go on. Finish.

11 MR. STROTHER: I just think that that was the only  
12 piece of evidence they had that said that you couldn't get  
13 this marketing plan without the copyright management  
14 information.

16:56 15 THE COURT: State your objection. This is the last  
16 go-round. State it for the record and I'm going to rule on  
17 it because you need a ruling before next week so you can  
18 plan or not plan on it.

19 MR. ZUMMO: We object to the proffered exhibit  
16:56 20 which does not have a number on it yet, which is a  
21 screenshot, because it is not relevant to any issue in this  
22 lawsuit.

23 It's a web version of the website that is --  
24 postdates the events that occurred in this case, and it also  
16:57 25 is irrelevant to any 1202 -- 17 USC 1202(b) violation



1 because even the proffered exhibit has "PW plus A" at the  
2 top, which satisfies the requirements of Section 1202 and  
3 the definitions of "copyright management information."

4 THE COURT: Well, we're not getting into that.

16:57 5 We're not getting into it.

6 MR. ZUMMO: That's why it's not relevant, Your  
7 Honor.

8 THE COURT: Not relevant?

9 MR. ZUMMO: Yes.

16:57 10 THE COURT: Again, the reasons it's not relevant?  
11 I'm trying to protect both sides' records and then I'll  
12 rule.

13 MR. ZUMMO: And it's in addition. But it's not  
14 relevant because this screenshot is from a version of the  
16:57 15 website that did not exist at the time period that is at  
16 issue in this lawsuit and during which we allege the  
17 violation of the DMCA occurred. It's not relevant because,  
18 even as proffered, the "PW plus A" logo and information at  
19 the top is --

16:58 20 THE COURT: I'm not getting into that.

21 MR. ZUMMO: And then, third, Your Honor, it's  
22 improper impeachment. It has not been shown to be contrary  
23 to anything that Ms. Wood actually said on the witness  
24 stand.

16:58 25 THE COURT: Okay. Your response.

1 MR. STROTHER: It's very relevant. First and  
2 foremost, we submit Defendants' Exhibit 28 to demonstrate to  
3 the jury and the Court that it is possible for someone out  
4 there -- including my client, frankly -- to click on the  
16:58 5 marketing floor plan and be able to download this file  
6 without any copyright management information on it, thereby  
7 making it so that it's possible someone distributed this  
8 without altering or removing the copyright management  
9 information.

16:58 10 THE COURT: I got it. I got it.

11 Sustain the objection. All right. They're  
12 out.

13 I'll stop the clock. I'll get you your time.  
14 And we'll see you back -- The key thing here is just to --  
16:59 15 And I know you will do the best you can on that jury charge.

16 And as soon as we let the jury go -- We're  
17 going to let them go for the day, I mean, especially with  
18 that long -- I've done this for years and I found out, if  
19 they come in and we'll say, 'We'll get back with you in  
16:59 20 three or four hours,' something like this is going to take  
21 maybe longer, it's going to take a break in between, and the  
22 next thing you know they're stewing in there after hearing,  
23 let's say, an hour more testimony and they're waiting three  
24 or four hours until we go through it, until we run all the  
16:59 25 copies; and then, when we argue it, they still couldn't

1 deliberate on it or be the end of the day.

2 So, that's the plan. I've done that routinely  
3 for years. Like, if, indeed, you had finished this witness  
4 today and wrapped up, they still would've come back Monday.

16:59 5 I've done this over and over again. The  
6 bottom line is we don't want to wear them out nor have them  
7 cool their heels downtown with nothing to do.

8 I'll get you your time in just a second. If  
9 you want just a peek at what the clock looks like, here.  
17:00 10 Just a peek at the clock. And I'm just going to write it  
11 all down.

12 Okay. Thanks.

13 Here's the time.

14 We'll see you Monday and we'll wrap it up.

17:01 15 See you Monday.

16 MR. ZUMMO: Thank you, Your Honor.

17 MR. STROTHER: Thank you, Your Honor.

18

19 COURT REPORTER'S CERTIFICATE

20 I, BRUCE SLAVIN, certify that the foregoing is a  
21 correct transcript from the record of proceedings in the  
22 above-entitled matter, to the best of my ability.

23

24 s/Bruce Slavin  
25 BRUCE SLAVIN, RPR, CM

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